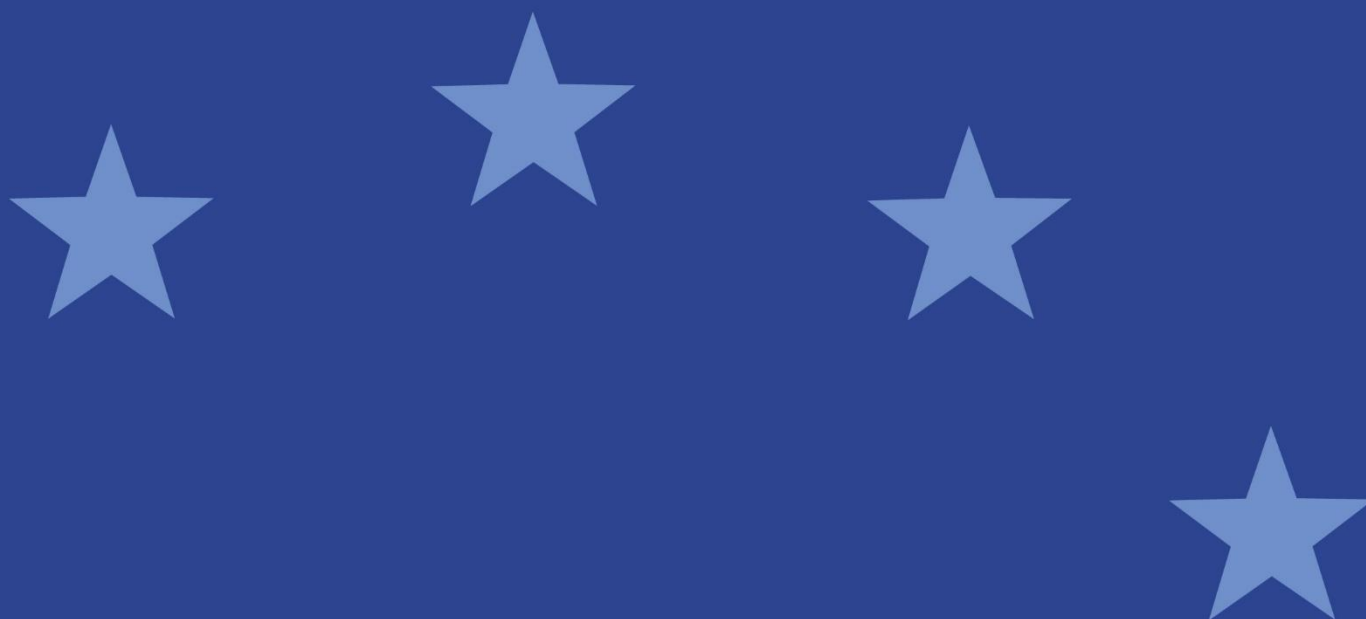


Consultation Paper

Draft technical advice on scrutiny and approval of the prospectus



Responding to this paper

ESMA invites responses to the questions set out throughout this Consultation Paper. Responses are most helpful if they:

- respond to the question stated;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all responses received by 28 September 2017.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

- Insert your responses to the questions in the Consultation Paper in the form “Response form_Consultation Paper on scrutiny and approval”, available on ESMA’s website alongside the present Consultation Paper (www.esma.europa.eu → ‘Your input – Open consultations’ → ‘Consultation on technical advice under the new Prospectus Regulation’).
- Please do not remove tags of the type <ESMA_QUESTION_SAC_1>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
- When you have drafted your response, name your response form according to the following convention: ESMA_SAC_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_SAC_ABCD_RESPONSEFORM.
- Upload the form containing your responses, in Word format, to ESMA’s website (www.esma.europa.eu under the heading ‘Your input – Open consultations’ → ‘Consultation on technical advice under the new Prospectus Regulation’).

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly indicate by ticking the appropriate checkbox on the website submission page if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision



we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading 'Data protection'.

Who should read this Consultation Paper

This Consultation Paper may be of particular interest to investors, issuers, including issuers already admitted to trading on a regulated market or on a multilateral trading facility, offerors or persons asking for admission to trading on a regulated market as well as to any market participant who is affected by the new Prospectus Regulation.

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Acronyms and definitions

Commission	European Commission
ESMA	European Securities and Markets Authority
ISIN	International Securities Identification Number
LEI	Legal Entity Identifier
MAR	Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC
NCA	National Competent Authority
Omnibus II Directive	Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority)
PRIPs Regulation	Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs)
Prospectus Directive	Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC
Prospectus Regulation	Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a

regulated market, and repealing Directive 2003/71/EC

RTS

Regulatory Technical Standards

Second Commission Delegated Regulation

Commission Delegated Regulation (EU) 2016/301 of 30 November 2015 supplementing Directive 2003/71 of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004

TD

Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (as amended by Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013)

URD

Universal registration document

1. Executive summary

Reasons for publication

The Prospectus Regulation was published in the Official Journal of the European Union on 30 June 2017 and will enter into force 20 days after its publication. The Regulation requires the European Commission to adopt delegated acts in a number of areas within 18 months of its entry into force.

On 28 February 2017, ESMA received a request for technical advice from the European Commission, including in relation to the scrutiny and approval of prospectuses and their constituent parts, the filing and review of the universal registration document and the conditions for losing the status of frequent issuer.

Content

This Consultation Paper presents a draft version of ESMA's technical advice.

Section 2 sets out a number of introductory considerations related to ESMA's work, including a discussion of the scope of the European Commission's empowerments to adopt delegated acts and a delimitation of various core terms used throughout the Consultation Paper.

In Section 3, ESMA presents its considerations as regards delegated acts on scrutiny of the prospectus. ESMA proposes that standard criteria for scrutiny of the completeness, comprehensibility and consistency of the prospectus be adopted and that beyond these standard criteria competent authorities be afforded a certain level of flexibility to take into account that prospectus scrutiny is by nature a qualitative process and that it is not possible to define exhaustive lists of criteria without endangering investor protection.

As scrutiny of the prospectus is very similar to the scrutiny as well as the review of the universal registration document, ESMA proposes that the general scrutiny criteria are extended to apply to the universal registration document, with a number of adjustments to account for the specificities of the universal registration document regime.

ESMA's draft technical advice is presented in Section 3.3. and questions for the consideration of stakeholders in Section 3.4.

In Section 4, ESMA addresses the delegated acts to be adopted in relation to approval of the prospectus. ESMA delivered regulatory technical standards on a similar mandate in 2015 which are currently set out in Commission Delegated Regulation 2016/301 and ESMA proposes that its technical advice should in large part reiterate these provisions, notwithstanding certain amendments to reflect changes at Level 1.

ESMA considers that approval and filing of the universal registration document are closely linked to approval of prospectuses in general and joint provisions are therefore proposed, again with modifications to account for the particularities of the universal registration document.

ESMA's draft technical advice is set out in Section 4.4. and questions for consultation in Section 4.5.

Section 5 contains ESMA's considerations as regards delegated acts on the conditions for losing the status of frequent issuer. ESMA considers that the conditions for losing the status of frequent issuer should be based on the conditions for obtaining the status of frequent issuer. As the latter conditions are clearly defined at Level 1, ESMA proposes that no further elaboration is needed at Level 2 and as such, no technical advice is presented in this area. Questions for stakeholders are presented in Section 5.3.

Lastly, Annex I presents the full text of the European Commission's request for ESMA to provide it with technical advice and Annex II lists the consultation questions for stakeholders.

Next steps

When finalising its technical advice to the European Commission, ESMA will consider all feedback received in relation to this Consultation Paper by 28 September 2017. A Final Report containing a summary of all consultation responses and a final version of ESMA's technical advice will be published on ESMA's website in Q1 of 2018.

2. Introduction

2.1. Background

1. Regulation (EU) 2017/1129 of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC ('the Prospectus Regulation' or 'the new Prospectus Regulation') was published in the Official Journal of the European Union on 30 June 2017.
2. As set out in the Prospectus Regulation, the European Commission ('the Commission') is obliged to adopt delegated acts in a number of areas 18 months after entry into force of the Regulation. The Commission has requested ESMA to deliver its technical advice by 31 March 2018 (Part I) and 31 August 2018 (Part II).

2.2. ESMA's mandate to deliver technical advice

3. On 28 February 2017 ESMA received a formal request from the Commission to provide technical advice on possible delegated acts concerning the Prospectus Regulation (the 'mandate', full text presented in Annex I).
4. The mandate received was structured in two parts, with Part I focusing on the format and content of prospectuses, including the EU Growth prospectus, together with the criteria for scrutiny and review of prospectuses and the procedures for their approval. Part II of the mandate, which has an extended deadline for delivery, focuses on documents containing minimum information describing a takeover by way of an exchange offer, a merger or a division together with a request for advice regarding the general equivalence criteria that should be applied in respect of the information requirements imposed by third countries.
5. For the purposes of Part I of the mandate, ESMA is requested to provide technical advice for the following delegated acts:
 - a) The measures specifying the criteria for the scrutiny of the universal registration document (the 'URD') and its amendments, and the procedures for the approval, filing and review of those documents as well as the conditions where the status of frequent issuer is lost (Article 9(14) of the Prospectus Regulation);
 - b) The measures specifying the format of the prospectus, the base prospectus and the final terms, and the schedules defining the specific information which must be included in a prospectus, including LEIs and ISINs (Article 13(1) of the Prospectus Regulation);
 - c) The measures setting out the schedule defining the minimum information contained in the URD (Article 13(2) of the Prospectus Regulation);

- d) The measures specifying the reduced information to be included in the schedules applicable under the simplified disclosure regime referred to in Article 14(1) for secondary issuances (Article 14(3) of the Prospectus Regulation);
 - e) The measures specifying the reduced content and standardised format and sequence for the EU Growth prospectus referred to in Article 15(1), as well as the reduced content and standardised format of its specific summary (Article 15(2) of the Regulation);
 - f) The measures specifying the criteria for the scrutiny of prospectuses, in particular the completeness, comprehensibility and consistency of the information contained therein, and the procedures for the approval of the prospectus (Article 20(11) of the Regulation).
6. This Consultation Paper focuses on the advice requested in subparagraphs 5a and 5f. Parallel Consultation Papers, covering the same consultation period, have been published in respect of the advice sought under the remaining subparagraphs of paragraph 5¹.
7. The mandate also sets out a number of principles which ESMA is invited to take account of when developing its advice. ESMA has been asked to provide advice that takes into account the Lamfalussy principles and the need to ensure the proper functioning of the internal market and improve the conditions of its functioning, particularly as regards the financial markets and a high level of investor protection. The Commission also asks that the advice be clear, coherent, comprehensive and proportional. The advice should also be justified by evidence, including a cost-benefit analysis where a range of technical options are available.

2.3. Scope of the Commission's empowerments

8. In order for ESMA to respond to the Commission's mandate on scrutiny and approval of the prospectus, it is necessary to consider the scope of the empowerments given to the Commission in Articles 9(14) and 20(11) of the Prospectus Regulation and to discuss the delineation between their different parts.

2.3.1. Delineation and limitation of the empowerments

9. Looking at the delineation between the two empowerments, the empowerment in Article 20(11) refers to criteria for the scrutiny and procedures for the approval of the prospectus while the empowerment in Article 9(14) relates to, *inter alia*, bespoke criteria for the scrutiny and bespoke procedures for the approval of the URD. As such, it can be inferred that the empowerment in Article 20(11) covers scrutiny and approval of all other types

¹ ESMA31-62-532 and ESMA31-62-649, both published on ESMA's website.

of documents than the URD, regardless of the way they are structured (single document prospectus, tripartite prospectus, base prospectus, tripartite base prospectus) or the schedule in accordance with which they are drawn up.

10. As regards the limitations of the empowerments, as the empowerment in Article 20(11) refers to 'prospectuses', it is clear that the delegated acts to be adopted in relation to this empowerment do not cover scrutiny of other documents such as final terms not included in the base prospectus or advertisements. The latter are covered by a separate empowerment under Article 22(9). For the avoidance of doubt, ESMA considers that the empowerment does cover scrutiny and approval of supplements to the prospectus.
11. Further in terms of demarcating the empowerment, it is necessary to consider omission of information. Omission of information from a prospectus is linked to the completeness of the prospectus and could as such be covered under the criteria for scrutiny. However, Article 18(4) of the Prospectus Regulation contains a separate empowerment for ESMA to specify the cases where information may be omitted and as such, ESMA is of the view that this area falls outside the scope of the empowerment for the Commission to specify criteria for scrutiny of prospectuses.

2.3.2. Terminology

Scrutiny vs. approval

12. Both the empowerment in Article 9(14) and in Article 20(11) of the Prospectus Regulation make a distinction between scrutiny and approval. In this regard, and in order to provide a clear distinction between these two concepts, ESMA considers that approval is the process which begins when a draft prospectus, or a constituent part thereof, is first submitted to a national competent authority ('NCA') and finishes when the NCA either approves or refuses approval of the prospectus. Scrutiny, on the other hand, is the examination undertaken by NCA prospectus readers to ensure that requirements related to completeness, comprehensibility and consistency are fulfilled. As such, scrutiny of the prospectus takes place during the approval process.

Scrutiny vs. review

13. In relation to the URD, it is furthermore necessary to draw a distinction between scrutiny and review. As evidenced by Article 9 of the Prospectus Regulation, these two concepts both relate to the examination of the URD, though each in their own way. During the first two consecutive financial years in relation to which an issuer draws up a URD, the URD is subject to approval before it can be published. The examination which the NCA undertakes in order to assess whether the URD is fit for approval is referred to as scrutiny; this is similar to the examination undertaken of other types of prospectuses or constituent parts thereof for the purpose of approval.
14. After having a URD approved in relation to two consecutive financial years, an issuer obtains the right to file and publish the URD without prior approval. Following such publication, the NCA may at any time choose to examine the URD in order to assess

whether it is complete, consistent and comprehensible. This examination is referred to as review. Additionally, amendments to the URD may undergo review by the NCA.

Filing

15. As regards filing of the URD, this will take place when an issuer has obtained the right to publish a URD without prior approval and furthermore when an issuer submits amendments to a URD, whether approved or filed. As the URD can be submitted to the NCA either for the purpose of approval or filing, the procedure for filing a URD or an amendment will resemble that for submitting a URD for approval.

Conditions for losing status of frequent issuer

16. Lastly, the status of frequent issuer is of relevance to whether an issuer is eligible to have its prospectus approved within the reduced time frame set out in Article 20(6) of the Prospectus Regulation. The conditions for losing the status of frequent issuer are therefore not closely linked with the other parts of the empowerments described above.

3. Scrutiny of the prospectus and scrutiny and review of the URD

3.1. Scrutiny of the prospectus

3.1.1. General considerations

Meaning of 'criteria'

17. The general scrutiny empowerment in Article 20(11) covers criteria for the scrutiny of prospectuses, in particular the completeness, comprehensibility and consistency of the information contained therein. In this regard, it is relevant to note that completeness, comprehensibility and consistency have been put on an equal footing in the definition of 'approval' in Article 2(r) of the new Prospectus Regulation in contrast to the current definition which establishes consistency and comprehensibility as sub-items of completeness².
18. ESMA is of the view that specifying criteria for prospectus scrutiny means identifying standards against which NCAs must evaluate whether a prospectus is fit to be approved. Understanding criteria for scrutiny in this way entails focusing on the quality of the prospectus through ensuring that prospectuses are scrutinised in a harmonised manner by different NCAs.

² Article 2(1)(q) of the Prospectus Directive.

19. Criteria are separate from the procedures which NCA prospectus readers will have to undertake, the difference being that while the criteria lay down the general conditions which have to be met for the prospectus to be approved, NCA prospectus readers will have to follow certain procedures to validate whether the criteria are met. ESMA is of the view that these procedures are outside the scope of the empowerment for the Commission to adopt delegated acts and therefore also outside the mandate for ESMA to provide technical advice. Instead, ESMA understands that NCAs have the freedom to determine their own procedures, as long as they apply the criteria for scrutiny.
20. Additionally, ESMA understands that the reference to *in particular the completeness, comprehensibility and consistency* means that the technical advice must cover criteria for the scrutiny of the completeness of the prospectus, criteria for the scrutiny of the comprehensibility of the prospectus and criteria for the scrutiny of the consistency of the prospectus and that ESMA may, in addition, define criteria in relation to any other aspects of prospectus scrutiny which it considers necessary to address.

Meaning of 'information given in the prospectus' / 'information contained therein'

21. In order to specify the criteria for scrutiny of the prospectus, it is necessary to delineate the information which the NCA prospectus reader must use as the basis for this scrutiny. The definition of approval in Article 2(r) of the Prospectus Regulation specifies that the scrutiny of whether the prospectus is complete, comprehensible and consistent should be done on the basis of *the information given in the prospectus*. This approach is further confirmed in the Commission's empowerment to adopt delegated acts which talks about specifying criteria for scrutiny of the prospectus, *in particular the completeness, comprehensibility and consistency of the information contained therein* (underlining added). With this in mind, it seems clear that NCAs should only be required to apply the scrutiny criteria to the information within the prospectus.
22. In ESMA's view, this general rule should not prevent each NCA from looking into information external to the prospectus in specific situations and on a case-by-case basis when it considers that it might be relevant to do so, nor should it stop the NCA from raising comments in relation to information outside the prospectus which would seem relevant for inclusion in the prospectus. Articles 32(1)(a), (b) and (c) of the PR establish that NCAs have the power to require the issuer, offeror or person asking for admission to trading to include supplementary information in the prospectus for the purpose of investor protection and to require those persons, as well as auditors, managers and financial intermediaries, to provide information. Furthermore, Recital 71 clarifies that NCAs should not be prevented from cooperating with other authorities, for example in the fields of banking and insurance, with a view to guaranteeing efficient scrutiny and approval of prospectuses.
23. These provisions make it clear that NCAs have the power to procure information from outside the prospectus. This implies that, while NCAs are not obliged to consider information outside the prospectus during the scrutiny process, they are permitted to do so which, in ESMA's view, provides a level of investor protection. A situation in which an

NCA might find it necessary to look at information outside the prospectus would for instance be where it has questions surrounding the financial situation of the issuer.

24. In summary, while NCAs may choose to examine information outside of the prospectus, ESMA considers that any such examination falls outside the scope of ESMA's mandate to deliver technical advice.

Harmonisation, flexibility and timeliness

25. In developing its technical advice in relation to criteria for scrutiny of the prospectus, ESMA has been mindful of three different and equally important considerations. Firstly, the goal of increasing harmonisation which is set out in Recital 60 of the Prospectus Regulation:

Not all issuers have access to adequate information and guidance about the scrutiny and approval process and the necessary steps to follow to get a prospectus approved, as different approaches by competent authorities exist in Member States. This Regulation should eliminate those differences by harmonising the criteria for the scrutiny of the prospectus and harmonising the rules applying to the approval processes of national competent authorities by streamlining them. It is important to ensure that all competent authorities take a convergent approach when scrutinising the completeness, consistency and comprehensibility of the information contained in a prospectus taking into account the need for a proportionate approach in the scrutiny of prospectuses based on the circumstances of the issuer and the issuance.

26. While emphasising the need to take into account the specificities of the issuer and the issuance by adopting a proportionate approach, the recital voices an intention on the part of the co-legislators to bring about harmonisation in the way NCAs approach scrutiny (and approval) of prospectuses. At the same time, ESMA has taken into account a second fundamental consideration in its work, namely that scrutiny of prospectuses has an inherent qualitative element as NCA staff has to 'read between the lines' when assessing the quality of a prospectus. In other words, in addition to checking whether the text of the prospectus meets the applicable disclosure requirements, NCA prospectus readers also have to identify connotations which might not be explicitly stated. Prospectus scrutiny is therefore more than a simple checkbox approach, with readers having to consider the consistency of disclosures and the readability and accessibility of the information contained in the prospectus. A level of flexibility in the criteria for scrutiny is as such crucial to ensure investor protection and not compromise the quality of the scrutiny process.
27. Additionally, in its mandate to ESMA the Commission has underlined the importance of promoting a swift and efficient scrutiny process so as to facilitate fundraising on capital markets. Timeliness is therefore a third important factor which ESMA has taken into account in its development of scrutiny criteria. Overall, the search for a balance between scrutiny criteria which are specific enough to bring about harmonisation and flexible enough to allow NCA prospectus readers to undertake the qualitative assessment which is inherent to prospectus scrutiny at the same time as not adding any unnecessary delay

to the scrutiny process has been core to the development of the provisions presented in Articles A and B in Section 3.3.

Delimitation and terminology

28. While the criteria discussed in the following sections specify the standards which NCAs should apply in order to ascertain that the prospectus is fit for approval, ESMA is of the view that the criteria do not imply an obligation for NCAs to verify the truthfulness of the information provided in the prospectus or to perform due diligence on individual pieces of information in the prospectus or on the prospectus in its entirety. Similarly, ESMA considers that NCAs are not required to assess whether the information in the prospectus complies with other legislative requirements than those of the prospectus regime. These considerations are based on the fact that it is clearly set out in Article 11(1) of the Prospectus Regulation that the responsibility for the information given in the prospectus should attach at least to the issuer or its administrative, management or supervisory bodies, the offeror, the person asking for the admission to trading on a regulated market or the guarantor.
29. References to the prospectus throughout this Consultation Paper should be taken to mean both the prospectus and its constituent parts. As such, the scrutiny criteria developed in this section apply to both a single document prospectus and to a registration document which is submitted for approval separately from the securities note and summary, where applicable. Furthermore, and in line with Recital 24, references to the prospectus should be understood as referring to all types of prospectuses, whether a standard prospectus, a base prospectus, a simplified prospectus for secondary issuances or an EU Growth prospectus.
30. In the following subsections, the discussions of technical advice regarding scrutiny criteria for completeness, comprehensibility and consistency are presented separately as ESMA considers that it promotes clarity to consider each concept on its own. This does not mean, however, that the intention is for the NCA prospectus reader to undertake three separate examinations of the prospectus, focusing on completeness, comprehensibility and consistency, respectively; the three sets of criteria are presented separately for clarity purposes only.
31. In developing criteria for scrutiny of the prospectus, ESMA has taken into account the requirements which apply to the Key Information Document under the PRIIPs Regulation, particularly the requirements in relation to form and content in Article 6 thereof.

3.1.2. Criteria for scrutiny of completeness

32. Assessing the completeness of the prospectus is a fundamental aspect of the prospectus scrutiny undertaken by an NCA. This assessment relates to undertaking an examination of the prospectus to ensure that it contains all the information required by the applicable disclosure schedules.

List of criteria

33. Of 'the three Cs' – completeness, comprehensibility and consistency – completeness is the term which has been outlined most clearly as the disclosure schedules set out very detailed requirements as regards which information the issuer must include in the prospectus for it to be complete. On this basis, ESMA considers that the scrutiny criteria for the completeness of the prospectus should simply bring together the content requirements set out elsewhere at Level 2.
34. As such, ESMA proposes the following criteria:
 - The correct schedules and building blocks have been used for drawing up the prospectus (this will include assessing the nature of the issuer, the securities and/or the offer/admission).
 - The prospectus reasonably addresses all the information items of the applicable disclosure schedules.
35. **On the basis of the above considerations, ESMA proposes the wording set out in Article A(1) of Section 3.3. in relation to the criteria for scrutiny of the completeness of the prospectus.**

3.1.3. Criteria for scrutiny of comprehensibility

36. Whereas the completeness of the prospectus is a relatively well defined concept, cf. paragraph 33 above, the comprehensibility of the prospectus is somewhat less tangible. ESMA considers that the comprehensibility of a prospectus relates to whether the information given in the prospectus is understandable to the reader. As such, a prospectus is incomprehensible where it contains material shortcomings which harm its readability and intelligibility and therefore affect investors' assessment of the investment at hand.
37. ESMA is of the view that the existence of smaller mistakes, such as typos or spelling errors, does not necessarily lead to the prospectus being incomprehensible. For this reason, NCAs should not be expected to focus on such smaller issues, unless they are so numerous that they collectively create a threat to comprehensibility.

Availability of the securities

38. On the basis that comprehensibility relates to whether the prospectus is understandable to the reader, ESMA is of the view that it should be taken into account who this reader will be, or in other words whether investors in the securities at hand will be of a retail or a wholesale nature. As wholesale investors will be more familiar with investing and therefore able to digest more complex disclosure, ESMA considers that where the securities will be restricted to such investors, a less stringent approach to comprehensibility can be applied. On the other hand, when securities will be available to both retail and wholesale investors, disclosure should be adapted to retail investors and more stringent comprehensibility criteria should apply.

39. Whether the securities will be restricted to wholesale investors can only be defined with reference to which annexes the prospectus is based on. According to Article 13(1) of the new Prospectus Regulation, there will be dedicated disclosure annexes for admission to trading on a regulated market of non-equity securities which are either to be traded only on a regulated market, or a specific segment thereof, to which only qualified investors can have access for the purpose of trading in such securities or which have a denomination per unit of at least €100.000.
40. These dedicated “wholesale” annexes will contain reduced disclosure requirements as compared to the disclosure requirements applicable to prospectuses for non-equity securities available to retail investors. These alleviated requirements are based on the assumption that qualified investors and investors with a higher investment capacity have the requisite knowledge and/or the necessary financial resources to invest based on less extensive – and less straightforward – disclosure.
41. As regards equity securities, it is not in the same way possible based on the prospectus to clearly identify whether the investors will exclusively be of a wholesale nature as no equity markets or market segments exist which are restricted to qualified investors and as there is no denomination threshold for equity as there is for non-equity.
42. On the basis of the above, ESMA considers that the distinction between wholesale and retail investors can only be based on whether the prospectus is drawn up according to the dedicated non-equity wholesale annexes, in which case less onerous scrutiny criteria should apply, or whether the prospectus is drawn up in accordance with other annexes, in which case the full set of comprehensibility criteria should be applied.

List of criteria

43. With this in mind, ESMA proposes the following criteria in relation to the scrutiny of the comprehensibility of the prospectus:
 - The prospectus should have a clear and detailed table of contents as well as an easily readable font size.
 - The prospectus should be free from unnecessary reiterations and group related information together.
 - The summary should generally, and in accordance with Article 7(3)(b) of the new Prospectus Regulation, avoid technical language and it should explain any technical terms where such are exceptionally used.
 - The prospectus should be structured in such a way that it helps the investors understand its contents.
 - The prospectus should explain mathematical formulas and clearly describe the product structure, where applicable.

44. ESMA considers that these criteria are necessary to ensure a basic measure of comprehensibility and these criteria should therefore apply to all prospectuses, regardless of whether the securities are available to retail and/or wholesale investors.
45. In addition, ESMA proposes a number of criteria to be applied in the case of prospectuses for securities which are not solely available to wholesale investors, i.e. a number of additional criteria to ensure that the prospectus is comprehensible to a possible retail audience. In this regard, ESMA suggests that:
 - The prospectus should be written in plain language.
 - The prospectus should provide a straightforward description of the issuer's operations and principal activities.
 - The prospectus should explain any trade or industry specific terminology used.
46. In developing the above criteria, ESMA has taken into account that the assessment of the comprehensibility of a prospectus is somewhat more qualitative than the assessment of the completeness and, to a lesser extent, the consistency. In other words, it is not possible to pin down an exact formula for ensuring that a prospectus is comprehensible as comprehensibility is a more abstract concept which needs to be assessed from an overall perspective and cannot necessarily be reduced to its constituent components.
47. For these reasons, ESMA considers that the technical advice should set out criteria with room for subjective assessment on the part of the NCA prospectus reader so as to allow for a qualitative assessment. This approach is reflected in the wording of the criteria in the proposed Article A(2) which refers to, inter alia, the prospectus being free from *unnecessary* reiterations, an *easily* readable font size being used and the prospectus being written in *plain* language. While the list of criteria establishes a number of harmonised standards, the use of this type of wording leaves room for the qualitative assessment which is fundamental to the scrutiny of comprehensibility.
48. **With these considerations in mind, ESMA proposes the wording presented in Article A(2) of Section 3.3. in relation to the criteria for scrutiny of the comprehensibility of the prospectus.**

3.1.4. Criteria for scrutiny of consistency

49. Like comprehensibility, consistency is a concept which has not been further specified within the prospectus regime and the concept therefore remains somewhat vague. Fundamentally, ESMA considers that consistency relates to the relationship between different parts of a document and that a prospectus can be considered consistent when its individual parts do not contradict each other and as such form a coherent whole.

List of criteria

50. With the above in mind, ESMA considers that the criteria which the prospectus must meet in order to be considered consistent should identify the elements of the prospectus

which need to be aligned. In this regard, ESMA is of the view that it is necessary to define relatively detailed criteria, for two reasons. Firstly, and as stated above, consistency is a less well-defined concept within the prospectus regime and as such, there is much more scope for developing criteria without repeating already existing provisions. Secondly, and closely related, the purpose of establishing scrutiny criteria is to harmonise the way in which NCAs scrutinise prospectuses and ESMA is of the view that the only way to bring about such harmonisation in relation to consistency is to establish criteria at a relatively granular level.

51. On this basis, ESMA has identified the following specific elements of the prospectus which should be aligned in order for the prospectus to be considered consistent:
 - Material and specific risks included in the prospectus should also be included in the risk factors section.
 - Information contained in the summary should be aligned with information contained elsewhere in the prospectus.
 - The figures in the use of proceeds section should correspond to the amount of proceeds being raised and, where applicable, the disclosure of the use of proceeds should be aligned with the disclosure of the issuer's strategy.
 - The description of the issuer in the operating and financial review (where required), the historical financial information, the description of the issuer's activity and the risk factors should be aligned.
 - Where a working capital statement is required, this should be aligned with the risk factors, the auditor's report, the use of proceeds and, where applicable, the disclosure of the issuer's strategy and how the strategy will be funded.
52. In selecting the above elements, the main consideration has been to identify areas which are likely to reflect related information and which could as such potentially be in conflict. While the Prospectus Regulation does not establish a hierarchy of key information in a prospectus, in coming up with the list of criteria, ESMA has endeavoured to identify information items which it considers to be of particular importance to the investor in making the investment decision.
53. That being said, ESMA underlines that it is not possible to define an exhaustive list of criteria for the scrutiny of consistency. While this point is also valid for the list of criteria for the scrutiny of comprehensibility and, to a lesser extent, completeness, and is as such addressed in Section 3.1.6. below, it is especially pertinent in relation to consistency as it is impossible to identify all the elements of the prospectus which need to be compared with each other in order to ensure that the prospectus is consistent.
54. **On the basis of the above considerations, ESMA proposes the wording set out in Article A(3) of Section 3.3. for its technical advice in relation to the criteria for scrutiny of the consistency of the prospectus.**

3.1.5. Further aspects of scrutiny

55. As set out in paragraph 20, ESMA understands that the empowerment for the Commission to specify criteria for scrutiny of the prospectus, *in particular the completeness, comprehensibility and consistency of the information contained therein*, indicates that the Commission may also adopt delegated acts in relation to other aspects of the prospectus which should be scrutinised.
56. Further to proposing criteria for scrutiny of the three Cs, ESMA has also considered whether there are other aspects of prospectus scrutiny in relation to which scrutiny criteria could be defined. Notably, ESMA considered whether the various requirements in relation to the length of the summary, the format of the prospectus and the base prospectus, the language of the prospectus and the information incorporated by reference should be considered as further aspects to be scrutinised and therefore addressed with further scrutiny criteria. ESMA came to the conclusion, however, that since requirements in relation to these topics are already established at Level 1, there is no need to also address them in the criteria for scrutiny at Level 2.
57. On this basis, ESMA has not identified any specific aspects beyond completeness, comprehensibility and consistency that need to be systematically addressed by way of scrutiny criteria.

3.1.6. Proportionate approach to prospectus scrutiny

58. Having considered the criteria for scrutiny of the completeness, comprehensibility and consistency of the prospectus, it is necessary to consider how these criteria should be applied. As mentioned above, Recital 60 of the Prospectus Regulation states that NCAs' approach to scrutiny must be harmonised, *taking into account the need for a proportionate approach in the scrutiny of prospectuses based on the circumstances of the issuer and the issuance*, and the Commission's mandate to ESMA clarifies that ESMA's technical advice is expected to reflect this point (see section 3.5 of Annex I).
59. The call for a proportionate approach appears to be an acknowledgement that it is not possible to draw up one-size-fits-all criteria as different criteria may apply to different types of prospectuses. ESMA therefore understands that NCAs should be afforded a certain level of flexibility when undertaking scrutiny. On this basis, and still being conscious of the goal of increased harmonisation, ESMA proposes that some measures of discretion be safeguarded for NCAs.

Possibility of going beyond standard criteria where deemed necessary

60. Firstly, ESMA is of the view that it is important to ensure that NCAs may decide to go beyond the criteria presented in Article A. The reason is that while ESMA has endeavoured to identify lists of scrutiny criteria that are as comprehensive as possible, it is not possible *ex ante* to foresee and define all possible shortcomings which a prospectus might have. For these reasons, the lists of scrutiny criteria set out in Article A are likely not to be exhaustive. If it were decided that NCAs' should not be permitted

to go beyond the listed criteria, ESMA fears that investor protection could be compromised as situations are bound to arise which are not foreseen at Level 2 and in which NCAs could therefore end up being forced to approve a prospectus despite having concerns that the prospectus does not comply with the requirements of the prospectus regime. NCAs could thereby end up being forced to approve prospectuses while being unable to address certain issues.

61. ESMA considered proposing that the technical advice identify those situations in which NCAs may apply additional criteria to those specified in Article A. Taking this approach would ensure that NCAs perform scrutiny in the same way and as such be very much in line with the overall goal of harmonisation. Situations in which an NCA might wish to apply additional scrutiny criteria could for example include a prospectus submitted by an issuer which is offering securities, particularly equity, to the public for the first time or admitting securities to trading on a regulated market for the first time, where the transaction or the securities described in the draft prospectus is/are particularly complex or where application of the standard criteria set out in Article A has uncovered a large number of issues with the draft prospectus.
62. However, ESMA is of the view that legislating, ex ante, about the situations in which NCAs may apply additional scrutiny criteria would defeat the purpose of permitting such additional criteria. As ESMA's concern with creating exhaustive lists of criteria is that prospectuses are bound to come along which meet all those criteria but which are still not fit for approval, defining the situations in which NCAs may go further before those situations arise would only perpetuate this concern. For this reason, ESMA has decided not to define the situations in which NCAs may go beyond the standard scrutiny criteria in its technical advice.
63. Once the new Level 2 measures become applicable, and provided that ESMA's technical advice is taken on board by the Commission, ESMA, however, intends to monitor the extent to which NCAs make use of the flexibility afforded to them. If it comes to light that NCAs apply additional scrutiny criteria in very different situations, ESMA will consider addressing this matter through Level 3 guidance.
64. Based on these considerations, ESMA proposes that NCAs should be permitted to raise comments on a prospectus based on considerations other than the criteria established in Article A.

Possibility of not applying criteria to already scrutinised/reviewed material

65. As ESMA has previously acknowledged³, the process of prospectus scrutiny and approval is an iterative one, beginning with the first submission of a draft prospectus to

³ [ESMA/2014/1186](#)

an NCA and normally spanning several rounds of scrutiny, feedback from the NCA to the issuer and resubmission of an amended draft of the prospectus.

66. In general, ESMA is of the view that it is reasonable to expect NCAs to perform the most extensive scrutiny in relation to the first draft of the prospectus as the entire content of this draft will be new to the NCA and will as such need to be scrutinised. For subsequent drafts of the prospectus, ESMA suggests that it would be reasonable to only require NCAs to apply the criteria to the elements of the prospectus which have changed since the previous draft. Taking this approach will not endanger the quality of the scrutiny as the criteria will be applied to all parts of the prospectus and it will further ensure an efficient use of resources as well as promote faster turn-around times for scrutiny of subsequent drafts.
67. ESMA therefore proposes that the criteria should apply to all drafts of the prospectus, however, for subsequent drafts, the criteria would only have to be applied to changes to the prospectus since the previous draft and to those parts of the prospectus which, directly or indirectly, could be affected by those changes. NCAs will be able to easily identify such sections as ESMA proposes that issuers should continue to be required to highlight changes in each subsequent draft of the prospectus (please refer to Section 4. in relation to this topic).
68. The question of applicability of the scrutiny criteria is furthermore relevant in relation to prospectuses which are submitted on a recurring basis in a substantially similar form. This may for example occur when an issuer applies for approval of a base prospectus covering an issuance programme around the same time each year. While the situation here cannot be explained with reference to the first and subsequent drafts of the prospectus, ESMA considers that the same logic applies: When an NCA has already applied the criteria to all information in a prospectus and a substantially similar draft prospectus is submitted for approval, it would be reasonable to only require the NCA to apply the criteria to those elements of the prospectus which differ from the previously scrutinised one. This approach can only be applied if the issuer submits the new draft prospectus with all changes compared to the previous one marked up so that they are easily identifiable by the NCA.
69. Lastly, ESMA considers that it would be reasonable to allow NCAs not to apply all the criteria to information which is incorporated into the prospectus by reference and which has already been approved. Article 19 of the new Prospectus Regulation allows issuers to incorporate information from a broader range of sources, some of which will not have been subject to previous scrutiny and approval. Information incorporated from these sources should have the criteria applied to it on an equal footing with the information directly included in the prospectus. As regards incorporated information which has already been scrutinised and approved, either by the same or a different NCA, the completeness and comprehensibility of this information will have already been examined. Therefore, it should only be necessary for the NCA to consider the consistency of the incorporated information with information included directly in the prospectus.

70. In relation to the derogations described in paragraphs 68 and 69, ESMA considers that NCAs would need to ask the issuer to provide a general confirmation that the information contained in subsequent drafts of the prospectus is not outdated and that it complies with the age requirements set out at Level 2.
71. ESMA underlines that the application of the three derogations set out in paragraphs 67-69 should never compromise the NCA's obligation to ensure the completeness, comprehensibility and consistency of the draft prospectus. Furthermore, ESMA clarifies that the NCA is not obliged to apply the derogations and should still be permitted to apply the criteria to and comment on the entirety of the draft prospectus.
72. **Based on these considerations, ESMA proposes the wording presented in Article B of Section 3.3.**

3.2. Scrutiny and review of the URD

3.2.1. General considerations

73. Based on the description of scrutiny in Section 2.3.2., the scrutiny of the URD in large part corresponds to the scrutiny of other types of prospectus as in both cases the examination of the document is undertaken for the purpose of approval. Furthermore, Article 9(2) of the Prospectus Regulation specifies that the standard rules for timing and comments from NCA to issuer apply to a draft URD submitted for approval. The empowerment for the Commission to adopt delegated acts on criteria for scrutiny of the URD does not explicitly refer to the completeness, comprehensibility and consistency of the URD in the same way that the empowerment relating to general scrutiny criteria does. However, it is ESMA's view that the scrutiny criteria for the URD should focus on the three Cs in a similar way, as these are the conditions for approving a URD and must as such be the focus of the scrutiny.
74. ESMA is therefore of the opinion that the scrutiny criteria for the URD should be very similar to the scrutiny criteria for other types of prospectuses, as developed in Section 3.1. This approach is in line with the Commission's request that joint technical advice be provided for the scrutiny of URDs and other types of prospectuses (see section 3.5 of the Commission mandate in Annex I). The criteria to be applied for the URD scrutiny may, however, need to deviate slightly from the generally applicable scrutiny criteria to take account of the specificities of the URD regime.
75. Additionally, the focus of the review of the URD and any amendments thereto strongly resembles the focus of the scrutiny. As explained in Section 2.3.2., NCA review of the URD is optional and will take place where the issuer has filed a URD without prior approval or filed an amendment, and where the NCA deems a review necessary. According to Recital 40 of the EC legislative proposal, *[e]ach competent authority should decide the frequency of such review taking into account for example its assessment of the risks of the issuer, the quality of its past disclosures, or the length of time elapsed since a filed universal registration document has been last reviewed.*

76. While review is as such a type of examination which is distinct from scrutiny, Article 9(8) of the Prospectus Regulation sets out that the review *shall consist in scrutinising the completeness, the consistency and the comprehensibility* of the URD and any amendments. This is confirmed by the Commission in its mandate to ESMA (please see section 3.6 of Annex I):

In essence, the scrutiny and the review of a URD should involve the same kind of work from a competent authority (checking the completeness, the consistency and the comprehensibility of the information given in the universal registration document and amendments thereto), the only difference being that scrutiny occurs ex ante, before the approval of a URD, whilst a review occurs ex-post, following the filing of a URD and subject to a decision of the competent authority to conduct such a review.

77. On this basis, ESMA considers that the criteria for scrutiny of the URD and other prospectuses should apply to review of the URD and its amendments, however, once again with the caveat that it is necessary to consider whether the specificities of the review process necessitate bespoke procedures.

3.2.2. Criteria for scrutiny of the URD and amendments thereto

78. In assessing whether the URD regime has any specific characteristics that necessitate adaptation of the general scrutiny criteria developed in Section 3.1., ESMA must look at the criteria developed for the scrutiny of completeness, comprehensibility and consistency as well as at the proportionate approach to those criteria.

Criteria (see Sections 3.1.2.-3.1.5.)

79. As regards completeness, ESMA considers that the criteria developed in Section 3.1.2. cover what is necessary for the scrutiny of the URD. The same requirements apply to the URD as to other types of prospectuses in terms of having to be drawn up in accordance with the correct annex(es) and building block(s) and fulfilling the minimum disclosure requirements and on this basis, ESMA considers that no additional criteria are needed to ensure the completeness of URDs.
80. Turning to the criteria for scrutinising the comprehensibility of the URD, ESMA is of the view that the retail scrutiny criteria must be applied to all URDs. This is because the URD is a document which can be used for multiple purposes and it is as such not possible for the NCA to know at the time of the scrutiny which type of investors will have access to the securities covered by the URD, as clarified by Recital 39 of the Prospectus Regulation:

The universal registration document should be multi-purpose insofar as its content should be the same irrespective of whether the issuer subsequently uses it for an offer of securities to the public or an admission to trading on a regulated market of equity or non-equity securities.

81. Since it can therefore not be excluded that investors of a retail nature will have access to the securities, ESMA considers that the most stringent criteria for scrutinising comprehensibility should apply to the URD.
82. In relation to the criteria for scrutinising the consistency of the URD, ESMA suggests that the criteria developed in Section 3.1.4. can also apply to the URD. While a number of these criteria relate to information which is contained in the securities note and will as such not be applicable to scrutiny of the URD, this is no different from the situation where a regular registration document is scrutinised and approved on a stand-alone basis where these criteria would also not be applicable. ESMA therefore considers that the criteria for scrutiny of consistency should be the same for prospectuses in general and URDs.
83. Lastly, ESMA understands that the fact that issuers may choose to meet certain TD publication obligations by including annual and half-yearly financial reports in the URD does not change the fact that issuers should ensure that all information included therein is compliant with the legal requirements of the TD and that the TD NCA is responsible for the supervision and enforcement of this information. In other words, the URD is only the vehicle for the publication of the annual and half-yearly financial reports and these should not be subject to further scrutiny by the prospectus NCA over and above that to which they would be subject if these reports were included or incorporated by reference in the prospectus.

Proportionate approach to scrutiny (see Section 3.1.6.)

84. As regards applying a proportionate approach to scrutiny, ESMA considers that the same considerations apply to the URD as to other types of prospectuses. As such, NCAs should be able to apply further criteria than the ones laid down in Article A as the same considerations apply regarding the need for a certain level of flexibility for NCAs in order to safeguard investor protection. Additionally, the full set of criteria should be applied to the first draft of the URD and for subsequent drafts, the criteria should only be required to be applied to the parts of the URD that have changed or any parts impacted by those changes. Equally, where a URD is submitted for approval and the NCA has applied the scrutiny criteria to a substantially similar URD in a previous financial year, the NCA should only be required to apply the criteria to the parts of the URD that have changed and any related parts. Furthermore, where a URD incorporates information by reference which has already been approved by either the same or a different NCA, the NCA should only be required to apply the scrutiny criteria relating to consistency to this information.
85. **On the basis of the above, ESMA proposes the wording set out in Articles A and B of Section 3.3. for its technical advice in relation to scrutiny criteria for the URD.**

3.2.3. Criteria for review of the URD and amendments thereto

86. Lastly, ESMA needs to consider whether specific provisions are needed for the review of the URD and amendments thereto compared to the provisions developed above.

87. As previously stated, the focus of the review strongly resembles that of scrutiny, i.e. identifying whether the conditions of completeness, comprehensibility and consistency are met. Therefore, the provisions for scrutiny of the URD, as set out in Articles A and B of the proposed technical advice, should all apply to the review of the URD as well, except where otherwise specified below.
88. There is, however, the important difference between scrutiny and review of the URD that the review is not aimed at approving the URD. Instead, where the NCA finds that the URD does not meet the standards of completeness, comprehensibility and consistency or that amendments or supplementary information are needed, the NCA has to notify the issuer of this. In this situation, the NCA will request that the issuer addresses the shortcoming either in the next filing of a URD or when the URD is used as a constituent part of a prospectus. Alternatively, where the NCA deems that the shortcoming *is likely to mislead the public with regard to facts and circumstances essential for an informed assessment of the issuer*, the issuer can be requested to address the shortcoming without delay (Article 9(9), third subparagraph of the Prospectus Regulation). With this in mind, ESMA considers that the technical advice should specify that the NCA has to inform the issuer whether its request for amendment is for immediate action or not. As this provision fits in better with the procedures for approval and filing than with the criteria for scrutiny, it is set out in Article F(2), presented in Section 4.4.
89. Additionally, ESMA has considered whether an NCA, if it decides to undertake a review of the URD, would be required to apply the review criteria in full and only once or whether multiple, partial reviews of the URD would be permissible. Article 9 of the Prospectus Regulation is silent on this point as are the relevant recitals. In general, ESMA is of the opinion that as the NCA has discretion to decide whether it finds it necessary to review the URD at all, it seems logical that the NCA should also be permitted to determine whether the entire URD or only selected parts of it merit review. On this basis, a partial review of the URD seems permissible.
90. What should, in ESMA's view, be avoided to the largest extent possible is for issuers to receive repeated requests for amendments at different points in time, especially as such might need to be addressed immediately and could therefore force the issuer to publish multiple amendments. This would support the general rule of NCAs only reviewing a URD once. There would, however, be obvious exceptions to such a rule of only requesting amendments once, for example if the issuer is involved in a publicly known accounting scandal which necessitates an immediate update of its URD or if the issuer has not addressed all comments in an amendment request previously provided by the competent authority. It therefore appears to be difficult to establish a firm rule in relation to the question of once-off vs. multiple review and full vs. partial review. ESMA considers that this is an area where practical experience with the URD regime will shed light on whether rules are needed. ESMA will therefore not propose any technical advice in this area but might consider establishing guidance at Level 3 at a later stage if it appears necessary.

91. Lastly, ESMA is of the opinion that the provisions regarding application of the scrutiny/review criteria developed in Section 3.1.6. only partially extend to the review of the URD: ESMA considers that it is not necessary to create an alleviation whereby NCAs only have to review those parts of the URD which they have not previously reviewed or scrutinised as it should be up to the NCA to decide whether the URD, or parts thereof, merit review. On the other hand, where an NCA has already reviewed a URD, or parts thereof, the NCA should not be required to apply the criteria to the URD/parts of the URD once the entire prospectus is up for approval and has to be scrutinised. Requiring re-scrutiny of previously reviewed URDs would go directly against one of the aims of the URD regime – shorter approval times – as described in Recital 43 of the Prospectus Regulation (underlining added):

[...] frequent issuers who produce a universal registration document should be granted the benefit of a faster approval process, since the main constituent part of the prospectus has either already been approved or is already available for the review by the competent authority. The time needed to obtain approval of the prospectus should therefore be shortened when the registration document takes the form of a universal registration document.

92. On this basis, ESMA considers that NCAs should only be required to scrutinise those parts of a URD, if any, which have not already been subjected to review. Again, the exception to this rule would be where NCAs need to ask issuers to confirm that the information in the URD is up to date. As also set out in paragraph 71, the application of this derogation should never compromise the NCA's general obligation to ensure the completeness, comprehensibility and consistency of the draft prospectus.
93. In relation to amendments to the URD, the criteria for review should apply to these on the same footing as to the URD.

3.3. Draft technical advice

94. On the basis of the considerations in Sections 3.1. and 3.2., ESMA proposes the following wording for its technical advice in relation to criteria for scrutiny of the prospectus and its constituent parts, including the URD, and in relation to criteria for review of the URD and amendments thereto:

Recitals

Prospectus scrutiny is a key factor in ensuring investor protection and there should be a level playing field across Member States. Criteria for scrutiny of the draft prospectus should therefore be established so that competent authorities apply harmonised standards when scrutinising draft prospectuses for the purpose of their approval.

For the purposes of investor protection, efficient allocation of resources and timely prospectus approval, information given in the draft prospectus should receive a measure

of scrutiny that is proportional to the circumstances of the issuer and the issuance. As scrutiny of the information given in the draft prospectus is a qualitative process, it is not possible to establish an exhaustive list of the scrutiny criteria competent authorities should apply. In some cases it may therefore be necessary to apply criteria beyond those which are mandatory, to ensure that a draft prospectus meets the standards of completeness, comprehensibility and consistency. In other cases a competent authority may receive a draft prospectus replicating information that has already been reviewed or scrutinised and that therefore does not necessitate further examination; in such cases, the competent authority should be permitted, though not obliged, to adapt its scrutiny.

Article A: Criteria for scrutiny of the draft prospectus and criteria for review of the draft universal registration document and amendments thereto

1. When scrutinising or reviewing the completeness of the information given in the draft prospectus, the competent authority shall consider in particular whether the draft prospectus meets the following criteria:
 - (a) The schedules and building blocks used for drawing up the draft prospectus are those required by this Regulation for the particular type of issuer and/or securities and/or offer and/or admission;
 - (b) The draft prospectus addresses all applicable information requirements in accordance with this Regulation.

The criteria in the first subparagraph are without prejudice to any omission of information in accordance with Article 18 of Regulation (EU) 2017/1129.

2. When scrutinising or reviewing the comprehensibility of the information given in the draft prospectus, the competent authority shall consider whether the draft prospectus is capable of being understood, taking into consideration the nature and circumstances of the issuer, the type of securities and the type of investors targeted.

To this end, the competent authority shall consider in particular whether the draft prospectus meets the following criteria:

- (a) The table of contents is clear and detailed;
- (b) The draft prospectus is free from unnecessary reiterations and related information is grouped together;
- (c) An easily readable font size is used;
- (d) Where applicable, the summary is written in a non-technical language and where technical terms are exceptionally used, they are explained;

- (e) The draft prospectus has a structure that helps the investor understand its contents;
- (f) The draft prospectus explains mathematical formulas and, where applicable, clearly describes the product structure;
- (g) The draft prospectus is written in plain language;
- (h) The draft prospectus clearly describes the nature of the issuer's operations and its principal activities;
- (i) The draft prospectus explains trade or industry specific terminology.

Letters (g), (h) and (i) of the second subparagraph shall not be applied to a draft prospectus drawn up in accordance with Annexes [wholesale debt and derivatives registration document and securities note] of this Regulation.

3. When scrutinising or reviewing the consistency of the information given in the draft prospectus, the competent authority shall consider whether the draft prospectus is free of material discrepancies between the different pieces of information provided in the draft prospectus, including any information incorporated by reference.

To this end, the competent authority shall consider in particular whether the draft prospectus meets the following criteria:

- (a) Any material and specific risks disclosed elsewhere in the draft prospectus are included in the risk factors section;
- (b) The information contained in the summary is aligned with information contained elsewhere in the draft prospectus;
- (c) The figures in the use of proceeds section correspond to the amount of proceeds being raised and, where applicable, the disclosure of the use of proceeds is aligned with the disclosure of the issuer's strategy;
- (d) The description of the issuer in the operating and financial review, where required, the historical financial information, the description of the issuer's activity and the risk factors are aligned;
- (e) In case a working capital statement is required, this is aligned with the risk factors, the auditor's report, the use of proceeds and, where applicable, the disclosure of the issuer's strategy and how the strategy will be funded.

Article B: Proportionate approach in the scrutiny and review of draft prospectuses

1. In order to ensure that the information given in the draft prospectus meets the standards of completeness, comprehensibility and consistency, when scrutinising

or reviewing a draft prospectus the competent authority may, where deemed necessary for investor protection, apply criteria beyond those laid down in Article A.

2. By derogation from Article A, where an issuer, offeror or person asking for admission to trading on a regulated market submits a first draft of a prospectus to the competent authority which is substantially similar to a prospectus which was already scrutinised or reviewed by that same competent authority, and the draft prospectus has been marked to highlight all changes made to the previously approved or reviewed prospectus, when scrutinising this first draft the competent authority shall only be required to apply the criteria laid down in Article A to those changes and to any information in the first draft affected by those changes.
3. By derogation from Article A, where a competent authority has reviewed a universal registration document filed without prior approval or an amendment to a universal registration document, when scrutinising the universal registration document or the amendment the competent authority shall only be required to apply the criteria laid down in Article A to the parts of the universal registration document or the amendment which have not been reviewed.
4. By derogation from Article A, where an issuer, offeror or person asking for admission to trading on a regulated market submits a first draft of a prospectus to the competent authority which incorporates information by reference from a document which has been approved in accordance with Regulation (EU) 2017/1129 or Directive 2003/71/EC, when scrutinising this information the competent authority shall only be required to apply the provisions in Article A(3).
5. When making use of the derogations laid down in paragraphs (2), (3) and (4), the competent authority shall request the issuer, offeror or person asking for admission to trading on a regulated market to confirm that the information in the final draft of the prospectus is still up-to-date and complies with the date requirements set out in the applicable annexes of this Regulation.
6. By derogation from Article A, where the issuer, offeror or person asking for admission to trading on a regulated market submits subsequent drafts of the prospectus, when scrutinising such subsequent drafts the competent authority shall only be required to apply the criteria laid down in Article A to changes made to the preceding draft of the prospectus and to any information in the draft prospectus affected by those changes.

95. In addition to the provisions suggested as Articles A and B above, and the provisions suggested as Articles C-F in Section 4.4., ESMA proposes that the Commission should include wording along the following lines when developing its delegated act on scrutiny and approval of prospectuses:

Except where expressly stated, references to the prospectus in this Regulation shall mean the prospectus or any of its constituent parts, including a universal registration document, whether submitted for approval or filed without prior approval, and any amendments thereto as well as supplements to the prospectus.

3.4. Questions for consultation

- Question 1: Do you agree with the criteria for determining whether a prospectus is complete (Article A(1))? Do you consider that additional completeness criteria are necessary?
- Question 2: Do you agree that NCAs should apply different criteria when assessing the comprehensibility of retail and wholesale prospectuses? If yes, do you agree with the criteria proposed in Article A(2)? Please make an alternative proposal if you do not agree with these criteria.
- Question 3: Do you agree with the criteria for assessing the consistency of a prospectus proposed in Article A(3)? Do you consider that additional consistency criteria are necessary?
- Question 4: In relation to scrutiny and review of the URD where ESMA proposes that only minimal changes be made to the generally applicable scrutiny criteria, do you consider there to be any further aspects where scrutiny and review of the URD need to differ from the general criteria?
- Question 5: Do you agree that it is not necessary to address partial/repeated reviews of a URD in the technical advice?
- Question 6: In order to take a proportionate approach to scrutiny and review of prospectuses, do you agree that NCAs should only be required to scrutinise information which has not already been scrutinised/reviewed/approved, as proposed in Article B(2)?
- Question 7: Do you believe that application of the proposed criteria will impose additional costs on issuers, offerors or persons asking for admission to trading? If yes, please specify the type and nature of such costs, including whether they are one-off or on-going, and quantify them.
- Question 8: Do you have any further suggestions for harmonising the way in which NCAs scrutinise prospectuses? In your view, should ESMA propose more detailed or additional criteria for scrutiny/review in its technical advice?

4. Approval of the prospectus and approval and filing of the URD

4.1. General considerations

96. As regards the second part of the empowerment for the Commission to adopt delegated acts which ESMA is delivering technical advice on, this relates to procedures for the approval of the prospectus.
97. ESMA delivered draft regulatory technical standards ('RTS') in 2015 in relation to a corresponding mandate set out in the Omnibus II Directive⁴. The draft RTS specified, inter alia, procedures for approval of the prospectus, and the RTS are now set out in Articles 2-5 of Commission Delegated Regulation 2016/301 (the 'Second Commission Delegated Regulation'). More specifically, these articles set out arrangements for the submission of an application for approval of a prospectus, changes to the draft prospectus, final submission of the prospectus and receipt and processing of the prospectus application by the NCA. Detailed accounts of the considerations behind the drafting of these provisions are presented in the Consultation Paper⁵ and the Final Report⁶ on ESMA's work in relation to the Omnibus II Directive.
98. When the new Prospectus Regulation becomes applicable, the Second Commission Delegated Regulation will no longer be applicable as it relates to a Level 1 framework which will by that time be superseded by the new Prospectus Regulation. In its mandate to ESMA, the Commission has requested that ESMA incorporates the content of the Second Commission Delegated Regulation into its technical advice, taking into account that some of the requirements of the Regulation have been lifted into the Prospectus Regulation (see section 3.5 of Annex I).

4.2. Approval of the prospectus

99. While the Second Commission Delegated Regulation will as such constitute the basis for the technical advice to be delivered, ESMA is of the view that it is necessary to consider whether changes to the Regulation are needed, based on a number of different considerations.

⁴ Article 13(7) of the Omnibus II Directive: *In order to ensure consistent harmonisation in relation to the approval of prospectuses, ESMA shall develop draft regulatory technical standards to specify the procedures for the approval of the prospectus [...].*

⁵ [ESMA/2014/1186](#)

⁶ [ESMA/2015/1014](#)

4.2.1. Modifications based on changes to Level 1

100. Firstly, it is necessary to consider whether the new Prospectus Regulation is different from the Prospectus Directive in any way which necessitates changes to the approval procedures. In this regard, ESMA is of the opinion that a series of changes need to be made to the Second Commission Delegated Regulation.

Appendix to registration document and URD

101. Firstly, ESMA is of the view that it is necessary to consider the requirement to include an appendix with key information on the issuer when a registration document or URD is passported, as set out in Article 26(4) of the Prospectus Regulation. This requirement applies to non-equity issuers and third country issuers who are permitted to choose their home Member State under Article 2(m)(ii) and (iii) of the Prospectus Regulation as these will be able to have a registration document/URD approved by one NCA and the accompanying securities note and summary approved by another NCA. ESMA understands that the purpose of the appendix is for the NCA approving the registration document/URD to approve the part of the summary which relates to the issuer. The home NCA for the prospectus approval will then approve the securities note and the part of the summary which relate to the securities.
102. ESMA has considered whether there is scope at Level 1 to allow the issuer to submit the appendix after the registration document or URD has been approved in order to have the appendix approved on a stand-alone basis and then passported separately. However, the Prospectus Regulation does not appear to leave room for this approach, as Article 26(4) expressly states that *[t]he approval of the registration document or universal registration document shall encompass the appendix*. On this basis, it seems to be determined at Level 1 that the appendix must be approved at the same time as the registration document/URD.
103. With this in mind, ESMA considers that the list of documents which the issuer has to submit either with the first draft of the prospectus or during the scrutiny process should be expanded to cover the appendix. However, this requirement has to be calibrated to take into account the various scenarios that might arise, as follows:
- a. Since wholesale debt securities – i.e. non-equity securities admitted to trading either with a denomination above €100.000 or to be traded only on a regulated market, or a specific segment thereof, to which only qualified investors can have access – are exempt from the obligation to provide a summary (Article 7(1) of the Prospectus Regulation), the issuer will be able to passport the registration document without an appendix. When submitting a registration document drawn up in accordance with the annex for wholesale debt and derivatives, the issuer should therefore not be obliged to submit an appendix.
 - b. When the registration document is drawn up in accordance with the annex for retail debt and derivatives, the summary requirement applies, however, the issuer may or may not wish to passport the registration document. It would therefore be

unnecessarily burdensome to require all issuers drawing up a retail registration document to enclose an appendix. Instead, ESMA suggests that issuers should have the choice of whether to submit an appendix based on whether they intend to passport the registration document, keeping in mind that if the issuer decides not to have an appendix approved at the time the registration document is approved, it will not at a later stage be able to passport the registration document.

- c. When a URD is drawn up, it is not possible to determine at the time of approval of the URD whether it will be used for offers/admissions to trading of a retail nature, a wholesale nature or both. Furthermore, the issuer may or may not wish to passport the URD for use in another Member State. To account for these factors, ESMA again considers it reasonable to grant the issuer the choice of whether to submit an appendix for approval at the same time as the URD is approved, again being aware that if no appendix is approved together with the URD, it will not be possible to passport the URD for use in an offer/admission of securities to retail investors.

104. Wording is included in Article C(2) to reflect this approach.

TD/MAR compliance statement for secondary issuance prospectuses

105. According to Article 14(2), a prospectus drawn up under the simplified disclosure regime for secondary issuances should take into account the regulated information which the issuer has already disclosed under the TD, where applicable, and MAR. ESMA understands that a significant reason for the alleviated disclosure requirements under the secondary issuance regime is the fact that information about the issuer is already available in the market and therefore does not need to be included in the prospectus itself. The availability of this information is therefore an important prerequisite for the correct functioning of the secondary issuance regime and ESMA considers that it should as such be a condition for an issuer's use of the regime.
106. With this in mind, ESMA proposes that when an issuer submits a draft prospectus drawn up under the secondary issuance regime for approval, the issuer should be required to provide a written statement confirming that the issuer has, to the best of its knowledge, complied with its obligation to disclose regulated information under the TD, if applicable, and MAR. While it will not have to be included in the prospectus itself, a statement of this kind will provide the NCA with confirmation that the required regulated information is available in the market and that the issuer should therefore be able to make use of the secondary issuance regime.
107. As a statement of this kind is already required at Level 1 for the URD (see paragraph 124), ESMA suggests that, for the purpose of simplification, the written statement to be provided in relation to a secondary issuance prospectus should be subject to the same provisions, including the requirement to cover regulated information for the last 18 months. Such a statement and its acceptance by NCAs is without prejudice to the issuer's disclosure obligations under MAR and TD being complied with and any enforcement action that may be taken in that respect.

Movement towards exclusively electronic communication

108. Thirdly, ESMA considers that a change to the approval procedures is necessary in relation to submission of documents. With the Second Commission Delegated Regulation, a rule was initiated whereby all drafts of the prospectus, as well as accompanying documentation, have to be submitted to the NCA in searchable electronic format and whereby NCAs are only permitted to require a paper copy of the final draft of the prospectus (see paragraph 27 of ESMA's Final Report⁷ on the Omnibus II RTS). Respondents to the consultation on the draft RTS confirmed to ESMA that requiring issuers to submit all versions of the prospectus in searchable electronic format would not impose costs on issuers as this reflected the existing market practice (see paragraph 10 of the aforementioned Final Report).
109. Consistent with the movement in previous revisions of the prospectus regime, the new Prospectus Regulation takes further steps towards making electronic communication the primary method for distribution of prospectuses. As such, the new Regulation only makes reference to electronic publication of the prospectus and no longer provides the option of publishing in a newspaper or in printed form. Additionally, the possibility for an investor to ask for a copy of the prospectus now refers to a durable medium and only if the investor specifically requests it shall that medium be a paper copy. With these changes at Level 1 in mind, ESMA is of the view that it would be reasonable to remove the option for NCAs to require that the final draft of the prospectus be submitted in a paper version as this appears to be out of step with the overall approach of the new Prospectus Regulation. ESMA therefore proposes small amendments to the existing Articles 2(1) and 2(2) of the Second Commission Delegated Regulation, now Articles C(1) and C(2) of the draft technical advice.

Other minor changes

110. As mentioned in paragraph 17, the definition of approval in the Prospectus Regulation puts consistency and comprehensibility on an equal footing with completeness which is a change compared to the definition in the Prospectus Directive. This change needs to be reflected in the procedures for approval and ESMA has made a number of small modifications in this regard, clarifying that completeness, comprehensibility and consistency are equally important in the consideration of whether a draft prospectus is suitable for approval and referring to 'outstanding issues' instead of 'incompleteness' as the overall reason for the draft prospectus not being approved.
111. Additionally, the Second Commission Delegated Regulation makes a number of references to the 'review'. However, as the new Prospectus Regulation makes a distinction between review and scrutiny in relation to the URD, it is necessary to replicate this distinction in the Level 2 measures. Therefore, ESMA proposes to replace

⁷ [ESMA/2015/1014](#)

references to 'review' in the current Articles 2(2), 2(2)(e) and 5(4) with references to 'scrutiny'.

112. Furthermore, Article 5(2) of the Second Commission Delegated Regulation – which sets out that the NCA must inform the issuer when documents submitted to it are incomplete or supplementary information is needed – has been moved into Article 20(4) of the new Prospectus Regulation and there is as such no need to reiterate this in ESMA's technical advice. However, Article 20(4) does not specify that the NCA must inform the issuer in writing via electronic means, and ESMA has therefore redrafted the current Article 5(2) of the Second Commission Delegated Regulation to voice this requirement.
113. Lastly, Article 5(4) of the Second Commission Delegated Regulation has been moved to Level 1 and is now reflected in Article 20(5) of the new Prospectus Regulation. According to this provision, NCAs can refuse to approve the prospectus and terminate the review process if the issuer, offeror or person asking for admission to trading on a regulated market is unable or unwilling to make the necessary changes or provide supplementary information requested by the NCA. As this provision is now laid down at Level 1, it is not necessary to set it out at Level 2 and ESMA will not include it in its technical advice. The same goes for the second sentence of the current Article 5(5) of the Second Commission Delegated Regulation which has also been included in Article 20(5) of the new Prospectus Regulation.

4.2.2. Modifications based on practical experience

114. Secondly, it is necessary to consider whether there is any indication that the approval procedures established in the Second Commission Delegated Regulation have impacted the market or NCAs in an unintended way or whether experience with the procedures has indicated that amendments or further additions would be helpful.
115. ESMA is not aware of the approval procedures having had any undesirable or unintended side effects. There have been few reactions to the new procedures on the side of market participants which gives reason to assume that the market has not been adversely impacted by the procedures. The same consideration applies to the impact of the new procedures on NCAs in relation to which ESMA is also unaware of any substantial concerns.
116. As such, no changes to the approval procedures established in the Second Commission Delegated Regulation appear to be necessary based on practical experience.
117. **On the basis of the above, ESMA proposes the wording set out in Articles C-F of Section 4.4. for its technical advice on the procedures for approval of the prospectus.**

4.3. Filing and approval of the URD

118. The empowerment for the Commission to adopt delegated acts in relation to the URD requires that procedures for the approval and filing of the URD and its amendments be specified.
119. The following two scenarios describe the way in which approval and filing of the URD and any amendments thereto will take place:
- i. For the first two consecutive financial years in which an issuer produces a URD, the URD is subject to NCA approval before its publication. During this time period, the issuer will submit a draft version of the URD to the NCA which will scrutinise and, if deemed appropriate, approve it. In this first scenario, the URD will as such be approved on a stand-alone basis while the accompanying securities note, summary and any amendments to the URD will be approved when the issuer submits an application for approval of those documents.
 - ii. After having drawn up a URD for two consecutive financial years, the issuer may file the URD with the NCA and publish it without prior approval. As such, the submission of the URD is not an application for approval but a filing of the URD. It is only when the issuer decides to use the URD for the purpose of an offer or admission to trading that the URD is approved. In this second scenario, approval of the URD therefore takes place concurrently with approval of the securities note, the summary and any amendments to the URD.
120. ESMA is of the view that the approval procedures for both scenarios should be very similar to the approval procedures which are generally applicable to prospectuses. This is based on the fact that approval procedures, as addressed in Section 4.2. of this Consultation Paper, relate to the iterative process in which an issuer submits a draft prospectus and the NCA provides comments on this draft until a final version meets the disclosure requirements in place. ESMA considers that this process should remain largely the same regardless of whether the document under consideration is a URD or a different type of prospectus. As such, ESMA considers that the specific procedures for approval of the URD and its amendments should be able to be subsumed under the general approval procedures, with some additional wording to take into account the specificities of the URD regime. This approach is aligned with the mandate from the Commission which invites ESMA to provide technical advice on approval that is the same for both URDs and prospectuses.
121. As regards filing of the URD in the second scenario, no procedures exist under the current prospectus regime. However, ESMA is of the view that filing the URD should not be substantially different from when an issuer submits the first draft of a prospectus for approval and as such proposes to include filing of the URD under these procedures.
122. Lastly, as regards amendments to the URD, these are an innovation under the new Prospectus Regulation and as such no rules exist in this area. ESMA is, however, of the

view that the procedures for filing and approval of amendments will largely follow those for filing and approval of the URD – and as such for the prospectus in general – and that amendments can therefore be facilitated by making small additions to these procedures.

123. The development of the approval and filing procedures below is split into three sections; procedures that apply to the approval of a URD, procedures that apply to the filing of a URD and procedures that apply to the filing and approval of amendments.

4.3.1. Approval of the URD

124. Firstly, as set out in Article 9(11)(a) of the new Prospectus Regulation, one of the conditions for becoming a frequent issuer is that the issuer, when submitting a URD for approval or filing it, provides written confirmation that it has filed and published all regulated information required under the TD and MAR. It seems clear from Level 1 that this confirmation should be provided when the URD is submitted for approval or filed and additionally, ESMA considers that the confirmation should be resubmitted along with the final draft of the URD, if the content of the confirmation has in any way changed. The reason for such a resubmission would be that an issuer's compliance with TD and MAR could change between the submission/filing of the URD and the approval, and it is important that this information is accurate at the date of the approval. As it is proposed that all documents provided in addition to the prospectus should be submitted via electronic means, ESMA is of the view that this should also apply to the confirmation to be provided under Article 9(11)(a) of the Prospectus Regulation.
125. Secondly, in order for a frequent issuer to be able to avail itself of the shorter approval deadline laid down in Article 20(6) of the Prospectus Regulation, the issuer must inform the NCA at least five days before it intends to submit an application for approval, i.e. before it intends to apply for approval of a securities note and of a summary and amendments to the URD, if applicable. Again, ESMA is of the view that the general rule of written, electronic communication between the issuer and the NCA should apply. Additionally, when informing the NCA that it intends to apply for approval of a prospectus shortly, ESMA considers that the issuer should be required to mention which type of securities it will be looking to offer/admit to trading in order to allow the NCA to assess and allocate the resources necessary for the fast-track approval of the prospectus.
126. Thirdly, ESMA considers it necessary to reflect on the requirement for an issuer that includes its annual or half-yearly financial report in the URD to also file the URD in accordance with the TD. Article 19(1) of the TD requires that, when the issuer discloses regulated information – which encompasses, inter alia, annual and half-yearly financial reports, it must at the same time file that information with its home NCA. Article 9(12)(b) of the Prospectus Regulation includes a provision corresponding to this requirement, according to which the issuer, when using the URD to meet TD obligations, “*shall file the [URD] in accordance with Article 19(1) of [the TD...]*”.
127. When the competent authority under the prospectus regime is different from the competent authority under the TD, the issuer will submit the final draft of the URD for

approval or file it with the prospectus NCA and subsequently publish it, and it will at the same time file the URD with the TD NCA. However, when the same authority is responsible for the prospectus and transparency regimes, when the issuer submits or files the URD, this will in some countries⁸ constitute the filing of the URD – including the annual and half-yearly financial report – for the purposes of Article 19(1) of the TD. In such situations, it will be important that the staff of the NCA dealing with prospectus transmits the URD to the relevant NCA staff in charge of TD matters. For this purpose, ESMA considers that it would be useful to require issuers to clarify, when they submit the URD, whether the URD is being used to meet publication requirements under the TD so that the URD can be forwarded to those dealing with TD matters without delay. Including this information will be of particular importance when the URD is filed without approval, as the NCA will in such instances not necessarily immediately read the URD and will as such not become aware of the URD containing TD filings. While the information will be of less importance where the prospectus and TD NCAs are separate and where a separate filing according to the TD is required (see footnote 9), ESMA considers that it should not impose any significant burden on issuers to require them to provide this information across the board.

128. Lastly, considerations in relation to the obligation for certain issuers to provide an appendix to the URD for the purpose of passporting are set out in Section 4.2.1.

4.3.2. Filing of the URD

129. As regards procedures for filing of a URD, ESMA firstly considers that the procedures for approval described in paragraph 124 regarding confirming that TD and MAR disclosures have been made and in paragraph 126-127 regarding mentioning whether the URD is being used to meet TD publication obligations should also apply to filing.
130. Additionally, ESMA proposes to allow issuers to omit information from the URD when they publish this without prior approval, without going through an authorisation process by the NCA at the time of the filing. While normally an issuer will only be able to omit information following NCA authorisation, allowing this is justifiable when taking into account that the information requirements in the disclosure annexes are based on which information an investor would need to be able to make an informed investment decision and the URD will not on its own be used as a basis for investments. Furthermore, by the time the URD is used for an offer or admission to trading, it will be subject to approval and the NCA will be able to take a position on whether an omission can be authorised. While an issuer should therefore be permitted to omit information when filing the URD,

⁸ In other countries where the NCA for prospectus and transparency matters is one and the same, there will be national rules requiring that regulated information under the TD – including the annual and half-yearly financial report – be filed according to a specific procedure. In such countries, the submission/filing of the URD with the staff handling prospectus matters will therefore not fulfil the filing obligation under TD Article 19(1) and the issuer will have to also file the URD in accordance with the TD procedure.

the issuer should be required to submit a request for omission of information when it files the URD so that the NCA can take this request into consideration if it chooses to review the URD or when the URD is approved together with the securities note.

131. Thirdly, as regards the list of documents which issuers must submit alongside the prospectus when applying for approval (as set out in Article 2(2) of the Second Commission Delegated Regulation), ESMA considers that this would have to look slightly different for filing of a URD without approval. The documents submitted alongside a filed URD are provided to the NCA for the purpose of allowing it to undertake a review of the URD, if it decides to do so, and for the purpose of approving the URD, if it is to be used as part of a prospectus.
132. On this basis, as the issuer will not be able to request a passport at the time of the filing of the URD, they should not be required to provide such a request (Second Commission Delegated Regulation Article 2(2)(c)).⁹ On the other hand, it is still relevant to require the issuer to provide either a cross reference list or annotation in the margin (Second Commission Delegated Regulation Article 2(2)(a)), a request for omission of information, if applicable (Second Commission Delegated Regulation Article 2(2)(b)), and any information which is incorporated by reference (Second Commission Delegated Regulation Article 2(2)(d)), so that this information is available when the NCA scrutinises the URD in connection with its approval or in case the NCA decides to review the URD. It is also relevant to include a slightly amended version of the requirement set out in Second Commission Delegated Regulation Article 2(2)(e) whereby the issuer has to provide any other information considered necessary by the NCA during the review process so that the NCA can receive additional information as needed if it decides to review the URD. Lastly, it is necessary to add a new item to the list according to which a URD, which is filed without approval and which addresses a request for an amendment or for supplementary information which was made previously by the NCA, has to be accompanied by an explanation of how the NCA's request is taken into account in the new URD.
133. Lastly, ESMA finds it necessary to discuss the concepts of drawing up a URD *every financial year*, of having a URD approved by the NCA *for two consecutive financial years* and of failing to file a URD *for one financial year* (Article 9(2)) as these concepts are of relevance to an issuer's right to publish a URD without prior approval. As previously explained, an issuer may file its URD and publish it without prior approval when it has had URDs approved for two consecutive financial years. If the issuer fails to file a URD for one financial year, it will lose the right to publish the URD without prior approval and again has to have URDs approved for two consecutive financial years before the right re-applies.

⁹ Based on Article 9(2), fifth subparagraph of the Prospectus Regulation, ESMA is of the understanding that if the issuer wishes to passport a URD which it has filed and published without prior approval, the issuer must first request the NCA to approve the URD and any amendments thereto.

134. ESMA considers that having a URD approved for two consecutive financial years means that the URDs must relate to successive annual financial periods. While the Level 1 text is silent on when such URDs would actually need to be approved, ESMA expects this to normally be in the course of the financial year following the financial year to which the URD relates. For clarity, ESMA considers that it is not necessary for the second URD to be approved immediately after the first URD expires (i.e. the two URDs do not have to be ‘back-to-back’).

4.3.3. Filing and approval of amendments

135. Turning lastly to the filing and approval of amendments to the URD, ESMA is of the view that a few aspects need to be considered.
136. When the URD has been filed and published without approval and the issuer submits an application for approval of a prospectus, the NCA will have to approve each constituent element of the prospectus, including the URD and any amendments thereto. At this point in time, the NCA will see for the first time any amendments to the URD which it has requested the issuer to make upon reviewing the URD, save for any amendments which it requested the issuer to publish without delay and which it may have reviewed after such immediate publication. Amendments made on the issuer’s own initiative may also be new to the NCA unless it has decided to review them at an earlier stage.
137. The scope and amount of amendments requested by the NCA is generally expected to be small, as the basis for allowing issuers to publish the URD without prior approval is the assumption that an issuer drawing up a URD for at least the third time is sufficiently familiar with the disclosure requirements to follow them in an autonomous way. However, in some situations a larger number of amendments and/or more substantial amendments may be requested. For such purposes, ESMA considers that it will be useful to require the issuer, when submitting the application for approval of a prospectus, to explain where/how it has addressed the amendment requests received from the NCA. This applies both to amendments which were required to be published immediately and to amendments which were submitted concurrently with the application for prospectus approval.
138. ESMA has considered the procedures surrounding amendments to a URD which has been passported to another Member State. According to Article 26 of the Prospectus Regulation, and as discussed earlier in the Consultation Paper, a URD can be passported to other Member States on a stand-alone basis if the issuer has a right to choose its home Member State under Article 2(m)(ii) and iii. According to Articles 9(2), in order to be passported a URD which has only been filed has to be approved along with any amendments and the entire package of documents can then be passported to another Member State.
139. With this in mind, ESMA has considered which procedure would apply in case a URD – with or without amendments – has been passported and the issuer subsequently files

an amendment with the NCA which approved the URD, where such filing takes place between the time when the URD is notified pursuant to Article 26 of the Prospectus Regulation and the time when the securities note and summary are approved by the NCA to which the URD was notified. In such a situation, and with reference to the procedure laid down for supplements in Article 26(5) of the Prospectus Regulation, ESMA is of the view that the NCA which approved the URD should approve the amendment and passport this to the Member State to which the URD was passported. While, as set out in Articles 9(7) and 10(3) of the Prospectus Regulation, there is no requirement for an amendment to be approved until securities are offered to the public or admitted to trading on a regulated market, a URD can only be passported when the URD and any amendments thereto have been approved, and ESMA therefore considers that it is necessary to immediately approve and passport an amendment to an already passported URD. ESMA is of the view that this procedure is relatively straightforward and that there is no immediate need to specify it at Level 2, and the procedure has therefore not been reflected in the below technical advice.

4.4. Draft technical advice

140. On the basis of the considerations in Sections 4.2. and 4.3., ESMA proposes the following wording for its technical advice on the procedures for the approval of the prospectus and its constituent parts, including the URD and amendments thereto, and on the procedures for filing of the URD and amendments thereto:

Recitals

The process of prospectus scrutiny and approval is an iterative one, where the decision of the competent authority to approve the draft prospectus involves repeated rounds of analysis and development of the draft prospectus on the part of the issuer, offeror or person asking for admission to trading on a regulated market to ensure that the draft prospectus meets the standards of completeness, comprehensibility and consistency. In order to provide greater certainty about the approval process to issuers, offerors and persons asking for admission to trading, it is necessary to specify which documents should be provided to competent authorities at different moments in the prospectus approval cycle.

Draft prospectuses as well as accompanying information should be submitted to the competent authority in searchable electronic format and through electronic means acceptable to that authority. As a searchable electronic format allows competent authorities to search for specific terms or words in the submitted documents, it contributes to an efficient and timely scrutiny process. In order to streamline the scrutiny and approval process and to facilitate a sustainable use of resources, the use of paper copies should be terminated and draft prospectuses should be submitted to the competent authority exclusively in searchable electronic format.

With the exception of the first draft prospectus, it is imperative that each draft of the prospectus submitted to the competent authority clearly show changes made to the previously submitted draft and explain how such changes address any outstanding issues notified by the competent authority. Each submission of a draft prospectus to the competent authority should include both a marked version, highlighting all changes to the previously submitted draft, and an unmarked version, where such changes are not highlighted.

Where disclosure items contained in the relevant annexes to this Regulation are not applicable or, given the nature of the issue or issuer, are not relevant in the case of a specific prospectus, those disclosure items should be identified to the competent authority in order to minimise any delays in the scrutiny process.

Article C: Submission of an application for approval of a draft prospectus or filing of a universal registration document and amendments to a universal registration document

1. The issuer, offeror or person asking for admission to trading on a regulated market shall submit all drafts of the prospectus exclusively in searchable electronic format via electronic means to the competent authority. A contact point to which the competent authority can submit all notifications in writing, via electronic means, shall be specified at the time the first draft of the prospectus is submitted.
2. The issuer, offeror or person asking for admission to trading on a regulated market shall also submit exclusively in searchable electronic format via electronic means to the competent authority:
 - (a) where required by the competent authority in accordance with Article [] of this Regulation or on their own initiative, a cross reference list which shall also identify any items from the annexes to this Regulation that have not been included in the draft prospectus because, due to the nature of the issuer, offeror or person asking for admission to trading on a regulated market or the securities being offered to the public or admitted to trading, they were not applicable.

Where the cross reference list is not submitted, and where the order of the items in the draft prospectus does not coincide with the order of the information provided for in the annexes to this Regulation, the draft prospectus shall be annotated in the margin to identify which sections of the draft prospectus correspond to the relevant disclosure requirements. A draft prospectus which is annotated in the margin shall be accompanied by a document identifying any items contained in the relevant annexes to this Regulation that have not been included in the draft prospectus because they were not applicable, due to the nature of the issuer, offeror or person asking for admission to trading on a

regulated market or the securities being offered to the public or admitted to trading. Where a universal registration document filed without prior approval is annotated in the margin, it shall be accompanied by an identical version which is not annotated in the margin;

- (b) where the issuer, offeror or person asking for admission to trading on a regulated market is requesting that the competent authority authorise the omission of information from the prospectus, a reasoned request to that effect;
- (c) where the issuer, offeror or person asking for admission to trading on a regulated market requests the notification of the prospectus pursuant to Article 25 of Regulation (EU) 2017/1129, upon approval of the prospectus, a request to this effect;
- (d) where the issuer submits for approval on a stand-alone basis a draft registration document drawn up in accordance with Annex [retail debt and derivatives] of this Regulation and intends to request the notification of this registration document pursuant to Article 26 of Regulation (EU) 2017/1129, an appendix setting out the key information on the issuer as required by Article 26(4) of that Regulation;
- (e) where the issuer submits for approval on a stand-alone basis a draft universal registration document and intends to request the notification of this universal registration document pursuant to Article 26 of Regulation (EU) 2017/1129, an appendix setting out the key information on the issuer as required by Article 26(4) of that Regulation, unless such notification is envisaged for the purpose of an offer of non-equity securities for which no summary will be required pursuant to the second subparagraph of Article 7(1) of Regulation (EU) 2017/1129;
- (f) any information which is incorporated by reference into the prospectus, unless such information has already been approved by or filed with the same competent authority in accordance with Regulation (EU) 2017/1129 or Directive 2003/71/EC;
- (g) where the issuer is submitting for approval a draft prospectus drawn up under the secondary issuance regime or a draft universal registration document or filing a universal registration document without prior approval, confirmation that, to the best of its knowledge, all regulated information which it was required to disclose under Directive 2004/109/EC, if applicable, and under Regulation (EU) No 596/2014 has been filed and published in accordance with those acts over the last 18 months or over the period since the obligation to disclose regulated information commenced, whichever is the shorter;

- (h) where a universal registration document is filed without prior approval, confirmation whether the universal registration document is being used to fulfil an obligation to publish an annual financial report required under Article 4 of Directive 2004/109/EC or a half-yearly financial report required under Article 5 of that Directive;
- (i) where a universal registration document is filed without prior approval and fulfils a request for amendment or supplementary information that was previously made by the competent authority in the context of a review pursuant to the second subparagraph of Article 9(9) of Regulation (EU) 2017/1129, an explanation as to how such request has been taken into account in the document;
- (j) any other information considered necessary, on reasonable grounds, for the scrutiny, review or approval by the competent authority and expressly required by the competent authority for that purpose.

In the case of a universal registration document filed without prior approval and in the case of an amendment, the information mentioned in letters (a), (b), (f), (g), (h) and (i) of the first subparagraph shall be submitted when the universal registration document or the amendment is filed with the competent authority whereas information mentioned in letter (j) shall be submitted during the review process. In all other cases, the information mentioned in the first subparagraph shall be submitted along with the first draft of the prospectus submitted to the competent authority or during the scrutiny process.

3. Where a frequent issuer, in accordance with Article 20(6) of Regulation (EU) 2017/1129, informs the competent authority that it intends to submit an application for approval of a draft prospectus, it shall do so in writing via electronic means and it shall state which of the disclosure annexes contained in this Regulation the securities note will be based on.
4. Under Article 9(2), second subparagraph of Regulation (EU) 2017/1129, an issuer shall be considered to have had a draft universal registration document approved for two consecutive financial years where a universal registration document is approved in relation to two successive annual reporting periods. The timing of the approval by the competent authority shall not be determinative.

Article D: Changes to a draft prospectus during the approval process

1. Following submission of the first draft of the prospectus to the competent authority, where the issuer, offeror or person asking for admission to trading on a regulated market submits subsequent drafts of the prospectus, each subsequent draft shall be marked to highlight all changes made to the preceding unmarked draft of the prospectus as submitted to the competent authority. Where only limited changes are made, marked extracts of the draft prospectus, showing

all changes from the preceding draft, shall be considered acceptable. An unmarked draft of the prospectus shall always be submitted along with the draft highlighting all changes.

Where the issuer, offeror or person asking for admission to trading on a regulated market is unable to comply with the requirement set out in the first subparagraph due to technical difficulties related to the marking of the draft prospectus, each change made to the preceding draft of the prospectus shall be identified to the competent authority in writing.

2. Where the competent authority has, in accordance with Article F of this Regulation, notified the issuer, offeror or person asking for admission to trading on a regulated market that it considers that the draft prospectus does not meet the standards of completeness, comprehensibility and consistency necessary for its approval and/or that changes or supplementary information are needed, the subsequently submitted draft of the prospectus shall be accompanied by an explanation as to how the outstanding issues notified by the competent authority have been addressed.
3. Where changes made to a previously submitted draft prospectus are self-explanatory or clearly address the outstanding issues notified by the competent authority, an indication of where the changes have been made to address the outstanding issues shall be considered sufficient.

Article E: Final submission of a draft prospectus for approval

1. With the exception of the information mentioned in Article C(2)(a) and C(2)(h), if applicable, submission for approval of the final draft of the prospectus shall be accompanied by any information mentioned in Article C(2) which has changed since a previous submission. The final draft of the prospectus shall not be annotated in the margin.
2. Where no changes have been made to the previously submitted information mentioned in Article C(2), the issuer, offeror or person asking for admission to trading on a regulated market shall confirm in writing that no changes have been made to the previously submitted information.
3. Except where the universal registration document has been filed without prior approval, where the final draft of a universal registration document is submitted for approval, the issuer shall inform the competent authority, in writing via electronic means, of whether the universal registration document is being used to fulfil an obligation to publish an annual financial report required under Article 4 of Directive 2004/109/EC or a half-yearly financial report required under Article 5 of that Directive.

Article F: Receipt and processing of the application for approval of a draft prospectus and of the filing of a universal registration document and amendments to a universal registration document

1. The competent authority shall acknowledge receipt of the initial application for approval of a draft prospectus, or of the filing of a universal registration document without prior approval or of an amendment to a universal registration document, in writing via electronic means as soon as possible and no later than by close of business on the second working day following the receipt. The acknowledgement shall inform the issuer, offeror or person asking for admission to trading on a regulated market of any reference number of the application for approval or of the filing and of the contact point within the competent authority to which queries regarding the application or the filing may be addressed.

In the case of an application for approval, the date of acknowledgement shall not affect the date of submission of the draft prospectus, within the meaning of Article 20(2) of Regulation (EU) 2017/1129, from which the time limits for notifications commence.

2. Where, upon scrutiny of the draft prospectus, the competent authority informs the issuer, offeror or person asking for admission to trading on a regulated market that the draft prospectus does not meet the standards of completeness, comprehensibility and consistency necessary for its approval and/or that changes or supplementary information are needed, it shall do so in writing via electronic means.

Where, upon review of the universal registration document filed without prior approval or of amendments to a universal registration document, the competent authority informs the issuer that the document does not meet the standards of completeness, comprehensibility and consistency and/or that amendments or supplementary information are needed, it shall do so in writing via electronic means. If the shortcoming must be addressed without undue delay, in accordance with Article 9(9), third subparagraph of Regulation (EU) 2017/1129, the competent authority shall state this.

3. Where the competent authority considers the outstanding issues to be of a minor nature or timing to be of utmost importance, the competent authority may notify the issuer, offeror or person asking for admission to trading orally, in which case there shall be no interruption of the time limits for approval of the draft prospectus as referred to in Article 20(4) of Regulation (EU) 2017/1129.
4. The competent authority shall notify the issuer, offeror or person asking for admission to trading on a regulated market of its decision regarding the approval of the draft prospectus in writing, via electronic means, on the day of the decision.

4.5. Questions for consultation

- Question 9: Has ESMA identified all the necessary amendments to the existing procedures for approval of the prospectus?
- Question 10: Do you agree with the provision for providing the appendix to the registration document/URD laid down in Article C(2)(d) and (e)?
- Question 11: Do you agree with the procedures for approval of the URD?
- Question 12: Do you agree with the procedures for filing of the URD? Are there any further considerations which ESMA should take into account in this regard?
- Question 13: Do you believe that any of the proposed procedures for approval and filing will impose additional costs on issuers, offerors or persons asking for admission to trading? If yes, please specify the type and nature of such costs, including whether they are one-off or on-going, and quantify them.

5. Conditions for losing status of frequent issuer

5.1. General considerations

141. Lastly, ESMA has been invited to provide technical advice on the Commission's empowerment to adopt delegated acts specifying the conditions where the status of frequent issuer is lost.
142. As established in Recital 43 and Articles 9(11) and 20(6) of the Prospectus Regulation, a frequent issuer has the right to have its time limit for approval reduced to five working days, provided that it forewarns the NCA of its intention to apply for approval five days before submission. For the purpose of clarity, ESMA understands that the shortened approval time applies to the prospectus in its entirety when the URD has either been approved or filed at a previous point in time. The shortened approval time does not, on the other hand, apply to the URD itself or to a situation where the URD, the securities note and the summary are submitted for approval at the same point in time as this would be inconsistent with the logic behind the shortened approval, namely that the NCA has already approved or reviewed the URD when the remainder of the prospectus has to be examined.
143. The conditions for being granted the status of frequent issuer are clearly defined at Level 1, and ESMA considers that the conditions under which the status of frequent issuer is lost should be based on the conditions under which this status is granted. This is supported by Article 9(11), second subparagraph of the Prospectus Regulation which explicitly states that *[w]here any of the above conditions is not fulfilled by the issuer, the status of frequent issuer shall be lost*. As such, ESMA is of the view that it is necessary to consider how the conditions for being considered a frequent issuer, and as such for losing this status, can be elaborated in the technical advice.

5.2. Developing the conditions

144. According to Article 9(11) of the Prospectus Regulation, an issuer will obtain the status of frequent issuer if it meets the following conditions:
- i. The issuer fulfils the conditions described in Article 9(2), first or second subparagraph or in Article 9(3) of the Prospectus Regulation;
 - ii. The issuer has provided written confirmation to the NCA that it has filed and published all regulated information under the TD and MAR; and
 - iii. The issuer has followed the applicable procedure for amending the URD when requested to do so by the NCA.
145. As regards (i), ESMA finds it necessary to examine this point further in order to understand how it applies. Article 9(11) of the Prospectus Regulation sets out that an issuer has to fulfil the conditions laid down in the first or second subparagraph of Article 9(2) to be considered a frequent issuer. The first subparagraph of this article states that *[a]ny issuer that chooses to draw up a universal registration document every financial year shall submit it for approval to the competent authority of its home Member State [...] whereas the second subparagraph lays down that [a]fter the issuer has had a universal registration document approved by the competent authority for two consecutive financial years, subsequent universal registration documents may be filed with the competent authority without prior approval.*
146. On this basis, it seems that the only requirement the issuer has to meet in order to fulfil condition (i) is to have submitted at least one URD for approval. In other words, an issuer is eligible to be considered a frequent issuer from the first time it submits a URD and may therefore have the reduced time limit for approval applied to the first prospectus it draws up with a URD as a constituent part.
147. This reading is further supported by Recital 39 (underlining added):
- On the condition that an issuer fulfils the criteria set out in this Regulation, the issuer should be deemed to be a frequent issuer as from the moment when the issuer submits the universal registration document for approval to the competent authority.*
148. On this basis, ESMA is of the view that condition (i) does not necessitate further elaboration at Level 2 as this condition is already clearly defined at Level 1.
149. As regards condition (ii), ESMA is already proposing that the issuer, when it submits the URD, be required to provide a written confirmation that all required regulated information under the TD and MAR has been filed and published, in writing via electronic means. It will as such be very simple for an NCA to assess whether an issuer meets condition (ii). Again, ESMA considers that further elaboration at Level 2 of this condition, and how an issuer may fail to meet it, is unnecessary.

150. Finally as regards condition (iii), the procedures for amending the URD are set out in Article 9(9) of the Prospectus Regulation, and it is ESMA's view that Article 9(9) is quite clear on how the issuer is to go about this. The only concept which might leave room for different interpretations is the phrase *without undue delay* which refers to when the issuer has to issue an amendment where the URD has a serious shortcoming. However, ESMA considers that elaboration of this phrase is better left until the new regime has been in application for a certain amount of time and it becomes clear 1) whether there is a need to lay down a more defined timeline, and 2) what such a timeline might reasonably be. ESMA therefore once again takes the position that condition (iii) is also sufficiently clearly outlined at Level 1 and that further detail is not needed at Level 2.
151. While further conditions for losing the status of frequent issuer could be envisioned, such as repeated filing and publication of URDs with substantial shortcomings, ESMA is of the understanding that it falls outside the scope of the empowerment to define such additional conditions. This is because Level 1 very clearly sets out the criteria under which an issuer will be considered a frequent issuer and because it is explicitly stated that infringing on any of these criteria will cause the status of frequent issuer to be lost. On this basis, there does not appear to be room to define additional criteria at Level 2.
152. The last topic which needs to be addressed in relation to losing the status of frequent issuer is whether the NCA should be required to notify the issuer when it loses this status. Knowing whether it is eligible to have its next prospectus approved within the reduced time limits might be helpful for an issuer and a notification could provide certainty in this regard. However, ESMA considers that an issuer is likely to already be aware of whether it meets the criteria for application of the reduced time limits since the criteria, as discussed above, are very clear. As such, there seems to be no need to mandate a notification from the NCA to the issuer in this regard. However, ESMA considers that the NCA may decide to include information about the issuer's status in the acknowledgement of receipt it has to send when the first draft of the URD is submitted for approval, or the URD is filed, as applicable.
153. **Based on the considerations presented above, ESMA considers that Article 9 of the Prospectus Regulation contains sufficient detail regarding the conditions for losing the status of frequent issuer and that no further elaboration is needed at Level 2.**

5.3. Questions for consultation

Question 14: Do you agree that it is not necessary at Level 2 to further specify the conditions for losing the status of frequent issuer? If no, please elaborate on how ESMA should further specify the conditions already established at Level 1.

Question 15: Do you have any other considerations which ESMA should be aware of when finalising the technical advice covered by this Consultation Paper?



Annex I: Mandate to deliver technical advice to the European Commission

REQUEST TO ESMA FOR TECHNICAL ADVICE ON POSSIBLE DELEGATED ACTS
CONCERNING THE REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL ON THE PROSPECTUS TO BE PUBLISHED WHEN SECURITIES ARE
OFFERED TO THE PUBLIC OR ADMITTED TO TRADING ON A REGULATED
MARKET

(UPDATED 01.06.2017)

With this mandate to ESMA, the Commission seeks ESMA's technical advice on possible delegated acts to supplement certain elements of the Regulation of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (the "**Regulation**")¹. These delegated acts should be adopted in accordance with Article 290 of the Treaty of the Functioning of the European Union (TFEU).

The Commission reserves the right to revise and/or supplement this mandate. The technical advice received on the basis of this mandate should not prejudice the Commission's final policy decision.

The mandate follows the Communication from the Commission to the European Parliament and the Council – Implementation of Article 290 of the Treaty on the Functioning of the European Union (the "**290 Communication**")², the Regulation of the European Parliament and the Council establishing a European Securities and Markets Authority (the "**ESMA Regulation**")³, and the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on better law-making (the "**Interinstitutional Agreement**")⁴.

This request for technical advice will be made available on DG FISMA's website once it has been sent to ESMA.

The formal mandate consists of two parts.

Part I

The technical advice for the following delegated acts should be received by the Commission within 13 months following the receipt of this mandate:

a) The measures specifying the criteria for the scrutiny and review of the universal registration document and any amendments thereto, and the procedures for the approval and filing of those documents as well as the conditions under which the status of frequent issuer is lost (Article 9(14) of the Regulation);

¹ Reference is made to the text approved by the European Parliament on 5 April 2017 and adopted by the Council on 16 May 2017 (<http://data.consilium.europa.eu/doc/document/PE-63-2016-INIT/en/pdf>).

² Communication of 9.12.2009. COM (2009) 673 final.

³ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC. OJ L331/84, 15.12.2010, p.84.

⁴ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making, OJ L123/1, 12.05.2016, p.1.

b) The measures specifying the format of the prospectus, the base prospectus and the final terms, and the schedules defining the specific information which must be included in a prospectus, including LEIs and ISINs (Article 13(1) of the Regulation);

c) The measures setting out the schedule defining the minimum information contained in the universal registration document (Article 13(2) of the Regulation);

d) The measures specifying the reduced information to be included in the schedules applicable under the simplified disclosure regime for secondary issuances (Article 14(3) of the Regulation);

e) The measures specifying the reduced content and standardised format and sequence for the EU Growth prospectus, as well as the reduced content and standardised format of its specific summary (Article 15(2) of the Regulation);

f) The measures specifying the criteria for the scrutiny of prospectuses, in particular the completeness, comprehensibility and consistency of the information contained therein, and the procedures for the approval of the prospectus (Article 20(11) of the Regulation).

Part II

The technical advice for the following delegated acts should be received by the Commission within 18 months following the receipt of this mandate:

g) The measures setting out the minimum information content of the documents referred to in points (f) and (g) of paragraph 4 and points (e) and (f) of the first subparagraph of paragraph 5 of Article 1 (documents containing minimum information describing a takeover by way of exchange offer, a merger or a division) (Article 1(7) of the Regulation);

h) The measures establishing general equivalence criteria, based on the requirements laid down in Articles 6, 7, 8 and 13 (equivalence of information requirements imposed by third countries) (Article 29(3) of the Regulation).

The European Parliament and the Council have been duly informed about this mandate.

The powers of the Commission to adopt delegated acts are subject to Article 44 of the Prospectus Regulation.

1. CONTEXT

1.1 Scope

On 30 November 2015, the Commission published its proposal for a Regulation on the prospectus to be published when securities are offered to the public or admitted to trading. On 7 December 2016 the European Parliament and the Council reached political agreement on a compromise text of the Regulation. This compromise text was endorsed by the COREPER on 20 December 2016 and approved by the ECON Committee of the European Parliament on 25 January 2017.

The main objectives of the Regulation are to reduce the administrative burden for issuers when drawing up a prospectus, in particular for SMEs, frequent issuers of securities and secondary issuances; to make the prospectus a more relevant disclosure tool for potential investors, especially when investing in SMEs; and to avoid overlaps between the EU prospectus and other EU disclosure rules.

Certain elements of the Regulation need to be further specified in delegated acts to be adopted by the Commission no later than 18 months after the entry into force of the Regulation.

The Regulation emphasizes a number of high level principles and objectives the Commission should take into account when exercising its delegated powers, in particular as regards investor protection, transparency in financial markets, proportionality, innovation in financial markets, reduction of administrative burden and cost and easier access to capital markets for issuers, including SMEs⁵.

1.2 Principles that ESMA should take into account

In developing its technical advice, ESMA should take account of the following principles:

- **Lamfalussy:** The principles set out in the de Larosière Report and the Lamfalussy Report and mentioned in the Stockholm Resolution of 23 March 2001.
- **Internal Market:** The need to ensure the proper functioning of the internal market and to improve the conditions of its functioning, in particular with regards to the financial markets, and a high level of investor protection.
- **Proportionality:** The technical advice should not go beyond what is necessary to achieve the objectives of the Regulation. It should be simple and avoid creating divergent practices by national competent authorities in the application of the Regulation.
- **Comprehensive:** ESMA should provide comprehensive advice on all subject matters covered by the mandate regarding the delegated powers included in the Regulation.
- **Coherent:** While preparing its advice, ESMA should ensure coherence within the wider regulatory framework of the Union.
- **Autonomy in working methods:** ESMA will determine its own working methods, including the roles of ESMA staff or internal committees. Nevertheless, horizontal questions should be dealt with in such a way as to ensure coherence between different strands of work being carried out by ESMA.

⁵ See Recital 83.

- **Consultation:** ESMA is invited to consult market participants (practitioners, consumers and end-users) in an open and transparent manner. ESMA should provide advice which takes account of different opinions expressed by the market participants during their consultation. ESMA should provide a feed-back statement on the consultation justifying its choices vis-à-vis the main arguments raised during the consultation.
- **Evidenced and justified:**
ESMA should justify its advice by identifying, where relevant, a range of technical options and undertaking an evidenced assessment of the costs and benefits of each. The results of this assessment should be submitted alongside the advice to assist the Commission in preparing its delegated acts. Where administrative burdens and compliance costs on the side of the industry could be significant, ESMA should where possible quantify these costs.

ESMA should provide sufficient factual data backing the analyses and gathered during its assessment. To meet the objectives of this mandate, it is important that the presentation of the advice produced by ESMA makes maximum use of the data gathered and enables all stakeholders to understand the overall impact of the possible delegated acts.

ESMA should provide comprehensive technical analysis on the subject matters described below, covered by the delegated powers included in the relevant provisions of the Regulation, in the corresponding recitals as well as in the relevant Commission's request included in this mandate.

- **Clarity:** The technical advice carried out should contain sufficient and detailed explanations for the assessment done, and be presented in an easily understandable language respecting current legal terminology used in the field of securities markets and company law at European level.
- **Advice, not legislation:** ESMA should provide the Commission with a clear and structured text, accompanied by sufficient and detailed explanations for the advice given, and which is presented in an easily understandable language respecting current terminology used in the field of securities markets in the Union.
- **Responsive:** ESMA should address to the Commission any question it might have concerning the clarification on the text of the Regulation, which it should consider of relevance to the preparation of its technical advice.

2. PROCEDURE

The Commission requests the technical advice of ESMA for the purpose of the preparation of the delegated acts to be adopted pursuant to the legislative act and described in section 3 of this mandate.

The Commission reserves the right to revise and/or supplement this mandate if needed. The technical advice received on the basis of this mandate should not prejudice the Commission's final decision.

The mandate follows the Communication from the Commission to the European Parliament and the Council – Implementation of Article 290 of the Treaty on the Functioning of the European Union (the "**290 Communication**"), the Regulation of the European Parliament and the Council establishing a European Securities and Markets Authority (the "**ESMA**

Regulation"), and the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on better law-making (the "**Interinstitutional Agreement**").

The European Parliament and the Council have been duly informed about this mandate.

After the delivery of the technical advice by ESMA, in accordance with the Annex to the Interinstitutional Agreement, signed on 13 April 2016, the Commission will continue to consult experts designated by the Member States in the preparation of draft delegated acts.

In accordance with the Annex to the Interinstitutional Agreement, the Commission services will state the conclusions they have drawn from the discussions of any meeting with Member States' experts on draft delegated acts, including how they will take the experts' views into consideration and how they intend to proceed. When they consider this necessary, the European Parliament and the Council may each send experts to these meetings.

The powers of the Commission to adopt delegated acts are subject to Article 44 of the Prospectus Regulation.

When preparing and drawing up the delegated act, the Commission will ensure a timely and simultaneous transmission of all documents, including the draft acts, to the European Parliament and the Council at the same time as Member States' experts.

As soon as the Commission adopts delegated acts, it will simultaneously notify to the European Parliament and the Council.

3. ISSUES ON WHICH ESMA IS INVITED TO PROVIDE TECHNICAL ADVICE

3.1 The format of the prospectus, the base prospectus and the final terms, and the schedules defining the specific information which must be included in a prospectus (Article 13(1) of the Regulation)

Since Directive 2003/71/EC (the Prospectus Directive) will be repealed when the Prospectus Regulation comes into application, so will Regulation (EU) No 809/2004 and all the schedules and building blocks it contains. It is therefore necessary to establish a new and complete set of disclosure schedules for different types of securities and issuers.

ESMA is invited to reassess whether the information items currently required in the existing schedules and building blocks are still fit for purpose, provide benefits to investors that are commensurate with their associated cost, or whether they should be deleted. ESMA should also reassess the general order of presentation of the information items, based on the experience gained by competent authorities.

- ESMA is invited to provide technical advice on the format of the prospectus and the schedules defining the specific information which must be disclosed in a prospectus.
- ESMA should follow the "building block approach" established by Regulation (EU) No 809/2004, distinguishing between the schedules for registration documents and those for securities notes, as well as any other appropriate building blocks.
- Specific schedules should be established for different types of securities (shares, non-equity securities with a denomination per unit above or below 100 000 EUR, asset-backed securities, depositary receipts on shares, units or shares of closed-ended collective investment undertakings). In a spirit of simplification, ESMA could explore ways to streamline these schedules in order to reduce the overall number of annexes compared to those currently included in Regulation (EU) No 809/2004.
- ESMA should evaluate whether specific schedules should be established for certain types of issuers such as issuers with a complex financial history, issuers which have made a significant financial commitment, or so-called "specialist issuers". If ESMA concludes that specific schedules are needed for some or all of such types of issuer, it should provide technical advice accordingly.
- ESMA is invited to carry forward the disclosure items currently required by Regulation (EU) No 809/2004 into the new schedules only once it has verified that they represent an appropriate balance between investor protection and cost to the issuers. For example, when disclosed in a prospectus, profit forecasts or estimates (Items 13.2 of Annexes I and X, 9.2 of Annex IV, and 8.2 of Annex XI of Regulation (EU) No 809/2004) must currently be accompanied by a report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer. ESMA is invited to consider the effects of repealing such requirement by assessing the benefits of such report to investors against the cost this entails for issuers to have them produced.
- When drafting the required minimum information items of the prospectus schedules, ESMA should ensure consistency and adequate alignment with the disclosure requirements of other pieces of EU legislation, like Directive 2004/109/EC (TD) and Directive 2013/34/EU⁶, so that issuers may easily incorporate by reference in their prospectus all or parts of the content of documents required under those acts (e.g. management reports, corporate governance statements, remuneration reports). In this respect, ESMA is asked to revisit the drafting of the section on the operating and financial review to ensure that the corresponding contents of the issuer's management report

⁶ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

drawn up under Directive 2004/109/EC can easily be incorporated by reference in that section of the prospectus.

- ESMA is also invited to provide technical advice on the format of the base prospectus and the final terms. In that context, ESMA should preserve the flexibility of the base prospectus regime and aim to considerably decrease compliance costs for issuers using base prospectuses.
- To ensure a consistent application of the Regulation across the Union, ESMA is asked to carry forward in its advice the principles currently laid out in Regulation (EU) No 809/2004 whereby issuers are entitled to include additional information going beyond the information items of the schedules and building blocks, while competent authorities may not require that a prospectus contain information items which are not included in such schedules and building blocks.

3.2 The schedule defining the minimum information contained in the universal registration document (Article 13(2) of the Regulation)

The universal registration document (URD) is designed as an optional shelf registration for companies that expect to frequently issue securities ("frequent issuers"). It is based on the premise that an issuer that draws up, every year, a complete registration document in the form of a URD should benefit from a fast-track approval (5 working days, instead of 10) when the competent authority approves a prospectus consisting of separate documents.

The logic behind the URD is to grant procedural alleviations to those issuers that intend to have frequent recourse to capital markets and choose to commit to draw up a URD every year. In exchange, those issuers will be able to swiftly seize market opportunities.

A URD functions as a registration document that can be used by issuers to offer securities, irrespective of their type (shares, debt, derivatives) or of the nature of the issuer (large company or SME). It follows that the content of a URD must be aligned with the disclosure standard for a share registration document and should be similar, in terms of the range of information covered, to what would be required in the context of an initial public offering on a regulated market.

A URD should be a comprehensive source of reference for investors, consolidating in one single document all information investors may need to know about a particular issuer, and avoiding duplicative disclosures by issuers. The Regulation allows frequent issuers to use the URD as a medium to publish the periodic information required by Directive 2004/109/EC (Transparency Directive).

- ESMA is invited to provide technical advice on the schedule defining the minimum information to be contained in the URD, taking into account recitals 39 to 45 of the Regulation. ESMA should base its work on the disclosure standard appropriate for a share registration document.
- When establishing the schedule defining the content of the URD, ESMA is asked to ensure that the information items that correspond to the content of the annual financial report and half-yearly financial report required under the Transparency Directive (historical financial information, operating and financial review, corporate governance) are drafted in a way that is aligned as much as possible with the relevant parts of Directive 2004/109/EC and Directive 2013/34/EU, enabling frequent issuers to incorporate such information by reference or to disclose them directly in the URD according to the arrangements set out in Article 9(12) and (13) of the Regulation.

3.3 The reduced information to be included in the schedules applicable under the simplified disclosure regime for secondary issuances (Article 14(3) of the Regulation)

A new alleviated prospectus regime will apply for issuers which have had securities admitted to trading on a regulated market or an SME growth market continuously for at least 18 months. When proceeding with a secondary issuance, such issuers will have the option to draw up a simplified prospectus taking into account the information they have already disclosed to the market on an ongoing basis under Regulation (EU) No 596/2014 (MAR)⁷, and where applicable, under Directive 2004/109/EC (TD) or the market rules of the SME growth market.

Issuers who opt to draw up this simplified prospectus are subject to a distinct "disclosure test", set out in Article 14(2) of the Regulation. This article defines the reduced information they are expected to disclose and clarifies that the simplified prospectus should be an autonomous document enabling investors to make an informed investment decision based on a more limited and focused set of relevant information. Recital 48 highlights that the rationale for simplifying the content of the prospectus: information already made available to investors by the issuer under its ongoing disclosure obligations (MAR and TD) need not be repeated in the prospectus.

⁷ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC Text with EEA relevance

- ESMA is invited to provide technical advice on the schedules applicable under the simplified disclosure regime for secondary issuances, taking into account recitals 48 to 50 of the Regulation. ESMA should develop specific draft schedules for both registration documents and securities notes, at least for shares and debt securities. When defining the information items of these schedules, ESMA shall take into account ongoing disclosure requirements of TD and MAR that would enable investors to have access to such items elsewhere than in a prospectus.
- ESMA is invited to clarify what form the concise summary of the relevant information disclosed under Regulation (EU) No 596/2014 (MAR) over the past 12 months⁸ should take in order for issuers to adequately inform their potential investors in a relevant and cost-efficient way, without merely repeating the contents of previous disclosures made under MAR.

3.4 The content, format and sequence of the EU Growth prospectus including its specific summary (Article 15(2) of the Regulation)

The EU growth prospectus is designed for offers of securities by three types of issuers: SMEs, companies traded on SME growth markets as long as their market capitalization does not exceed 500M€ and unlisted companies with less than 499 employees that raise below 20M€⁹ (jointly referred to as "SMEs and midcaps"). The EU growth prospectus is optional and cannot be used for an admission to trading on a regulated market.

The EU growth prospectus aims at facilitating access to financing on capital markets and reducing the administrative costs of raising capital for SMEs and midcaps. Its information content should be reduced compared to the prospectus used by issuers admitted to regulated markets, without compromising investor protection.

- ESMA is invited to identify the minimum disclosure requirements of the EU growth prospectus and to define the order of presentation of such disclosures (referred to as "sequence" in Article 15(2)).
- ESMA should adopt a "bottom-up approach" and avoid taking the existing Annexes of Regulation (EC) No 809/2004 as a starting point. This means that the exercise should not consist in identifying information which could be omitted from a full prospectus. Instead, ESMA should devise a new, substantially alleviated standard of disclosure from scratch without being guided by the content and format of the prospectus which applies to issuers on regulated markets. In particular, ESMA should take as a benchmark the content of admission documents required by markets where the prospectus obligation does not apply, e.g. the rules of MTFs that cater for SMEs and midcaps.

⁸ Referred to in letter (c) of the second subparagraph of Article 14(3) of the Regulation

⁹ As defined in Regulation (EU) 2015/1017 on the European Fund for Strategic Investments.

- When calibrating the content of the EU growth prospectus, ESMA should aim to ensure that SMEs and midcaps are obliged to disclose sufficient information on their strategy and prospects to allow investors to take an investment decision. ESMA should not propose information items which would imply high costs for SMEs with only a low corresponding added value for investors (e.g. items involving statements by independent accountants or auditors).
- There should be a tangible difference between the reduced content of the EU growth prospectus and the content of the prospectus which applies to issuers on regulated markets.
- ESMA should develop specific draft schedules for both registration documents and securities notes, based on the high-level outlines featured in Annexes IV and V of the Regulation. Schedules should be developed at least for shares, debt and derivatives.
- ESMA should develop the minimum disclosure requirements for the EU Growth prospectus, following a standardized sequence.
- To make it easy for SMEs and midcaps to draw up an EU growth prospectus, ESMA should aim to create schedules and headings that allow SMEs to prepare their prospectus with no or little external advice, if they wish to do so.
- ESMA is also invited to advise the Commission on the content and standardized format applying to the specific summary of an EU growth prospectus. Such content should be a considerably shorter version of the summary set out in Article 7, and should not include the key information corresponding to disclosure items which are not required in the EU growth prospectus.

3.5 The criteria for the scrutiny of prospectuses and URDs and the procedures for their approval (Articles 9(14) and 20(11) of the Regulation)

The decision of the competent authority to approve a prospectus involves analysis of, and changes to, the draft prospectus on the part of the issuer to ensure that the prospectus meets the requirement of completeness, consistency and comprehensibility.

The reform of the EU prospectus regime aims to create a single rulebook that ensures a coherent implementation throughout the EU. The practices of competent authorities concerning scrutiny and approval should be aligned so as to avoid supervisory forum shopping.

A swift and efficient scrutiny of prospectuses is conducive to facilitating fundraising on capital markets, allowing issuers to seize market windows speedily.

- ESMA is invited to provide technical advice on the criteria for the scrutiny of prospectuses, in particular the completeness, comprehensibility and consistency of the information contained therein, and the procedures for the approval of the prospectus.

- ESMA's technical advice is expected to accommodate a proportionate approach by competent authorities in the scrutiny of prospectuses based on the specific circumstances of the issuer and the issuance.
- Commission Delegated Regulation (EU) 2016/301 of 30 November 2015 specifies the requirements regarding the procedures for approval of prospectuses. Since that Regulation will cease to apply when the new Prospectus Regulation comes into application, ESMA is invited to incorporate the content of that Regulation, bearing in mind that some of the requirements of that Regulation have already been introduced in the Prospectus Regulation.
- With respect to scrutiny and approval, ESMA is invited to provide technical advice that is the same for both URDs and prospectuses. This is without prejudice to ESMA's technical advice on the procedures for the filing and (ex-post) review of URDs and on the conditions where the status of frequent issuer is lost.

3.6 The procedures for the filing of the URD, the criteria for the review of the URD and the conditions under which the status of frequent issuer is lost (Article 9(14) of the Regulation)

After a frequent issuer has had a URD approved by a competent authority for two consecutive financial years, subsequent URDs may be filed with the competent authority without prior approval. Following such filing, the competent authority may, at any time, review the contents of a filed URD and of any amendments thereto. The Regulation acknowledges that it is up to competent authorities to decide if and when such ex-post review should be carried out. As indicated in Recital 40, each competent authority may decide the frequency of such review taking into account its assessment of the risks of the issuer, the quality of its past disclosures, or the length of time elapsed since a filed URD has been last reviewed.

In essence, the scrutiny and the review of a URD should involve the same kind of work from a competent authority (checking the completeness, the consistency and the comprehensibility of the information given in the universal registration document and amendments thereto), the only difference being that scrutiny occurs ex ante, before the approval of a URD, whilst a review occurs ex post, following the filing of a URD and subject to a decision of the competent authority to conduct such a review.

The status of frequent issuer is gained from the moment an issuer submits its first URD for approval to the competent authority. Yet, due to the conditions set out in Article 9(11) of the Regulation, such status may be challenged at various points in time thereafter. Indeed, upon each filing or submission for approval of a URD, and every time an application for approval of a prospectus consisting of separate documents (including a URD) is made, the provision of certain statements and, where applicable, amendments to the URD will be required for such a frequent issuer to keep its status and benefit from the fast-track approval.

- ESMA is invited to provide technical advice on the procedures for the filing and the criteria for the review of the URD and the conditions under which the status of frequent issuer is lost.
- In doing so, ESMA should take into account the fact that the objectives and criteria of the ex-post review of URD are aligned with those of an ex-ante scrutiny and relate to the completeness, the consistency and the comprehensibility of the information provided by the issuer.

3.7 The minimum information content of documents describing a merger or a takeover by way of exchange offer (Article 1(7) of the Regulation)

Points (f) and (g) of Article 1(4) and points (e) and (f) of the first subparagraph of Article 1(5) of the Regulation grant a prospectus exemption where the following securities are either offered to the public or admitted to trading on a regulated market (or both):

- securities offered in connection with a **takeover** by means of an exchange offer,
- securities offered, allotted or to be allotted in connection with a **merger or division**.

Such an exemption is conditional on a document being made available to the public containing information "*describing the transaction and its impact on the issuer*".

This represents an alleviation compared to the corresponding exemptions of Directive 2003/71/EC – set out in points (b) and (c) of Article 4(1) and points (c) and (d) of Article 4(2) of that Directive – where the precondition to be fulfilled was that a document be available containing information "*which is regarded by the competent authority as being equivalent to that of a prospectus*".

The Commission notes that the information provided to the public in the context of takeovers and mergers, as well as the way such information is controlled by competent authorities, is prescribed in national corporate laws, including laws implementing Directive 2004/25/EC on takeover bids¹⁰. The implementing measures to be taken by the Commission in that field under the empowerment of Article 1(7) are therefore not intended to interfere with these laws, and their focus should be limited to ensuring a minimum harmonisation of these documents for the purpose of applying the exemption granted in points (f) & (g) of Article 1(4) and points (e) & (f) of the first subparagraph of Article 1(5) of the Regulation, without prejudice to the ability of national laws to require more information from issuers involved in takeovers and mergers for other purposes (including supplying adequate information to existing shareholders in the context of a vote in an annual general meeting).

¹⁰ Article 6(2) of that Directive requires the initiator of a bid to submit to its competent authority "*an offer document containing the information necessary to enable the holders of the offeree company's securities to reach a properly informed decision on the bid*", before making such offer document public. Such an offer document may be subject to the prior approval of the competent authority. Article 6(3) of that Directive prescribes a minimum content for such offer document.

- ESMA is invited to provide technical advice on the minimum information content of the documents referred to in points (f) and (g) of paragraph 4 and points (e) and (f) of the first subparagraph of paragraph 5 of Article 1, taking into account recital 16 of the Regulation. In particular, ESMA is invited to define how the impact of the transaction on the issuer should be presented in such documents.

3.8 General equivalence criteria for prospectuses drawn up under the laws of third countries (Article 29(3) of the Regulation)

Issuers domiciled in a third country may only carry out an offer of securities to the public or an admission to trading on a regulated market in the EU using a prospectus drawn up under the laws of that third country provided that the Commission has taken a decision stating that the information requirements contained in the laws of such third country are equivalent to the information requirements of the Prospectus Regulation (an "equivalence decision").

Such issuers can then elect a home Member State, among those allowed under Article 2 (m) (ii) and (iii) of the Regulation. Provided it has concluded cooperation arrangements with the relevant supervisory authorities of the third country, the competent authority of this home Member State can then approve the prospectus drawn up under the laws of that third country. Such a prospectus is subject to the language rules of the Regulation and can benefit from the EU passport.

An equivalence decision by the Commission must rely on general equivalence criteria based on the requirements of the Regulation applying to the general disclosure test (Article 6), the summary (Article 7), the base prospectus (Article 8) and the minimum information and format of registration documents and securities notes (Article 13).

- ESMA is invited to provide technical advice on general equivalence criteria to guide future assessments of national laws of third countries in relation to disclosures when securities are either offered to the public or when an admission to trading on a regulated market is sought. These criteria should reflect the requirements laid down in Articles 6, 7, 8 and 13 of the Prospectus Regulation.
- As regards the general equivalence criteria reflecting Article 13 of the Regulation, the Commission does not expect ESMA to proceed schedule by schedule. Instead, ESMA should focus on the minimum content and format of prospectuses for equity securities and for non-equity securities (potentially distinguishing between debt and derivatives).

4. INDICATIVE TIMETABLE

This mandate takes into consideration the expected date of application of the Regulation, that ESMA needs enough time to prepare its technical advice, and that the Commission needs to

adopt the delegated acts in accordance with Article 290 of the TFEU. The powers of the Commission to adopt delegated acts are subject to Article 44 of the Regulation.

The delegated acts provided for by the Regulation and addressed under **points 3.1 to 3.6** of this mandate should be adopted no later than 18 months following the entry into force of the Regulation. Therefore the deadline set to ESMA to deliver the technical advice is **thirteen (13) months** after the date of receipt of this mandate, i.e. 31 March 2018.

The Regulation does not envisage any deadline for the adoption of the delegated acts addressed under **points 3.7 and 3.8** of this mandate. Therefore, the Commission asks ESMA to deliver its technical advice on these two items **eighteen (18) months** after the date of receipt of this mandate.

Indicative timetable for the delegated acts referred to in points 3.1 to 3.6

Deadline	Action
Entry into force of Prospectus Regulation [June 2017, (expected)]	Date of entry into force of the Regulation (twentieth day following that of its publication in the Official Journal of the European Union)
March 2018 (13 months after date of receipt of the request)	ESMA provides its technical advice on points 3.1 to 3.6 .
Until June 2018	Preparation of the draft delegated acts by Commission services on the basis of the technical advice by ESMA. The Commission will consult with experts appointed by the Member States within the Expert Group of the European Securities Committee (EG ESC) on the draft delegated acts.
Until October 2018	Translation and adoption procedure of draft delegated acts.
Until April 2019	Objection period for the European Parliament and the Council (three months which can be extended by another three months)
June 2019 (24 months after entry into force)	Date of application of the Prospectus Regulation and delegated acts.

Annex II: List of questions for consultation

Scrutiny of the prospectus and scrutiny and review of the URD

- Question 1: Do you agree with the criteria for determining whether a prospectus is complete (Article A(1))? Do you consider that additional completeness criteria are necessary?
- Question 2: Do you agree that NCAs should apply different criteria when assessing the comprehensibility of retail and wholesale prospectuses? If yes, do you agree with the criteria proposed in Article A(2)? Please make an alternative proposal if you do not agree with these criteria.
- Question 3: Do you agree with the criteria for assessing the consistency of a prospectus proposed in Article A(3)? Do you consider that additional consistency criteria are necessary?
- Question 4: In relation to scrutiny and review of the URD where ESMA proposes that only minimal changes be made to the generally applicable scrutiny criteria, do you consider there to be any further aspects where scrutiny and review of the URD need to differ from the general criteria?
- Question 5: Do you agree that it is not necessary to address partial/repeated reviews of a URD in the technical advice?
- Question 6: In order to take a proportionate approach to scrutiny and review of prospectuses, do you agree that NCAs should only be required to scrutinise information which has not already been scrutinised/reviewed/approved, as proposed in Article B(2)?
- Question 7: Do you believe that application of the proposed criteria will impose additional costs on issuers, offerors or persons asking for admission to trading? If yes, please specify the type and nature of such costs, including whether they are one-off or on-going, and quantify them.
- Question 8: Do you have any further suggestions for harmonising the way in which NCAs scrutinise prospectuses? In your view, should ESMA propose more detailed or additional criteria for scrutiny/review in its technical advice?

Approval of the prospectus and approval and filing of the URD

- Question 9: Has ESMA identified all the necessary amendments to the existing procedures for approval of the prospectus?
- Question 10: Do you agree with the provision for providing the appendix to the registration document/URD laid down in Article C(2)(d) and (e)?

- Question 11: Do you agree with the procedures for approval of the URD?
- Question 12: Do you agree with the procedures for filing of the URD? Are there any further considerations which ESMA should take into account in this regard?
- Question 13: Do you believe that any of the proposed procedures for approval and filing will impose additional costs on issuers, offerors or persons asking for admission to trading? If yes, please specify the type and nature of such costs, including whether they are one-off or on-going, and quantify them.

Conditions for losing status of frequent issuer

- Question 14: Do you agree that it is not necessary at Level 2 to further specify the conditions for losing the status of frequent issuer? If no, please elaborate on how ESMA should further specify the conditions already established at Level 1.
- Question 15: Do you have any other considerations which ESMA should be aware of when finalising the technical advice covered by this Consultation Paper?